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VIVIEN MARY LOUISE MILLER

B.A. (Hons), M.A.

VIOLENT CRIME, SEXUAL DEVIANCY AND
EXECUTIVE CLEMENCY IN FLORIDA,
1889-1918

THESIS SUBMITTED FOR THE DEGREE OF
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Abstract

Violent Crime, Sexual Deviancy and Executive Clemency in Florida, 1889-1918

Vivien M. L. Miller

Between 1889 and 1918, over 11,000 persons were convicted and sentenced to hard labour in Florida's convict lease camps located in piney woods and next to phosphate mines, and run by private contractors who leased state prisoners to ensure a steady and cheap labour force. Before the introduction of probation and parole in the twentieth century, there were four routes to freedom from Florida's prison system: expiration of sentence, death, escape and pardon. This study focuses on the pardon route.

Florida's State Board of Pardons was a constitutional creation empowered to commute punishments, grant pardons and restore civil rights to convicted felons and misdemeanants. The Board was a necessary component of the state's criminal justice apparatus in the late nineteenth and early twentieth centuries due to the general inadequacy of the penal arrangements and the discretionary nature of the criminal justice system. While pardon was intended as an extraordinary device rather than a regular or ordinary release procedure, between 1889 and 1918, pardon in Florida was in effect a regular releasing device for a significant minority of offenders, and a substitute for parole.

Pardon board records show how the culture and prejudices of a society, in this case Florida society, continued to affect offenders even after conviction. Constructions of criminal behaviour, based on community prejudices and the attitudes of the pardoning board members themselves, informed decisions to grant or withhold clemency to offenders convicted of the sexual and interpersonal violence offences which are the focus of this study. Letters from prisoners and supporters, petitions and endorsements addressed to the Board of Pardons, the Governor or other individual Board members, and attorneys provide important insights into class, race and gender relations in Florida in a period of significant economic and political change.

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ABBREVIATIONS IN NOTES

ACF	State Pardon Board, Application Case Files
AGC	Attorney General Correspondence
CLP	Convict Lease Program Files
DWI	Death Warrants Issued
FTU	<i>Florida Times Union</i>
IC	State Pardon Board, Incoming Correspondence
OC	State Pardon Board, Outgoing Correspondence
PADR	State Pardon Board, Pardon Application Dockets and Registers
RCA	Reports of the Commissioner of Agriculture
RGA	Reports of the Adjutant General
SCCF	Florida Supreme Court Case Files
TMT	<i>Tampa Morning Tribune</i>

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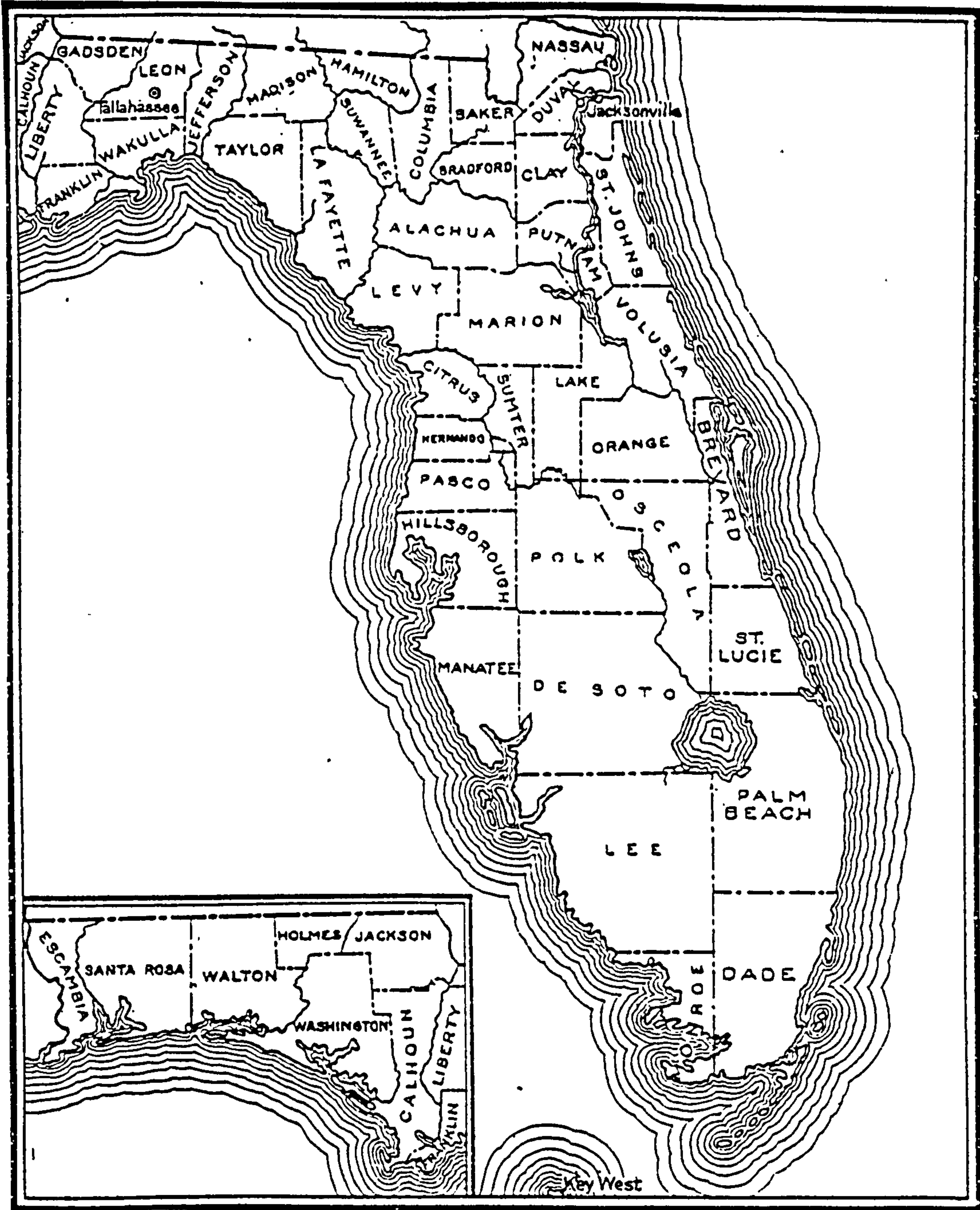
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COUNTY MAP OF STATE OF FLORIDA



INTRODUCTION

Between 1889 and 1918, over 11,000 persons were convicted and sentenced to hard labour in Florida's convict lease camps. These camps were located in piney woods and next to phosphate mines in the northern and central counties of the state; they were run by private contractors who leased state prisoners to ensure a steady and cheap labour force. Before the introduction of probation and parole in the twentieth century, there were four routes to freedom from Florida's prison system: expiration of sentence, death, escape and pardon. Seven out of every ten persons committed to the State Prison System in the period 1889-1918 were discharged only on the expiration of their sentence; before 1900 less than five percent of state convicts were able to secure release via the executive clemency (pardon) route, but this rose to twelve percent from 1901-1918.

Executive clemency is a collective term for distinct categories: full or conditional pardon; commutation of sentence, usually from death to imprisonment for life or a term of years, as 'the power to grant a complete release encompassed the power merely to reduce a sentence';¹ reprieve or stay of execution; restoration of civil rights and remission of fines and forfeitures. A full pardon was absolute and irrevocable, and upon acceptance by the pardonee, it had the effect of blotting out guilt, and immediately restored the recipient to full rights of citizenship.² In

Ex Parte Garland (1867) the United States' Supreme Court 'led other courts to accept the overly generous statement of the Supreme Court that a pardon obliterates all guilt and makes the recipient a new person, with new credit and capacity'.³ Conditional pardon recognised the existence of guilt but accepted that the penalty should be mitigated. A conditional pardon could be revoked, as it was dependent on certain conditions being fulfilled, and it did not restore the recipient's civil rights. By 1902 Florida's State Board of Pardons, with the approval of the State Supreme Court, 'granted nearly all pardons on the condition that the one receiving the pardon shall thereafter lead a sober, peaceable, law-abiding life, and that he shall be re-incarcerated upon his failure to comply with these conditions'.⁴ Pardon was the last opportunity for release in a series of discretionary administrative determinations encompassed in the criminal justice system,⁵ ranging from the decisions to arrest and prosecute a suspect, to the jury's determination of guilt and punishment, and the appellate court's decision on whether to grant a writ of error. It was then that the Governor, with the approval of at least two other members of the State Board of Pardons, decided whether to exercise clemency.

While pardon was intended 'as an ultimate, extraordinary remedy, designed to be used in cases where the ordinary legal remedies were not available', rather than a regular, ordinary release procedure, between 1889 and 1918 pardon in Florida was nevertheless in effect a regular releasing device for a significant minority of inmates, and a substitute for parole. The practice in Florida of issuing conditional rather than full pardons after 1902 was intended to function in the same way as parole in other states.⁶ The State of Florida appeared to be

actively encouraging its long-term and life-term prisoners to apply for clemency and was using conditional pardon in particular as a means of effecting the early release of these groups. The volume of applications for pardon and commutation of sentence increased dramatically in the first two decades of the twentieth century; by 1917 twenty percent of the prison population was applying for pardon. Registers of pardon applications from 1874 to 1917 contain 2577 entries, and it was commonplace for offenders to apply two or three times over a number of months or years.⁷

Florida's State Board of Pardons was a constitutional creation empowered to commute punishments, grant pardons and restore civil rights to convicted felons and misdemeanants. The Constitution of 1838, drafted for Statehood, the Confederate Constitution of 1861 and the Constitution of 1865, concluded at the end of the Civil War, all vested the pardoning power in the Governor alone. The Constitution of 1868 passed during Congressional Reconstruction and the subsequent Constitution of 1885, which followed the re-establishment of southern white conservative government and which was adopted in the context of a growing socio-economic confrontation between the Bourbon Democrats and their opponents, provided for a five-member Board of Pardons. Under the 1885 Constitution, the Board comprised the Governor, the three Supreme Court Justices, and the state's Attorney General.⁸ In 1896, the Supreme Court Justices were replaced by the Secretary of State, Comptroller, and Commissioner of Agriculture, all popularly elected cabinet officers, all serving four year terms and all except the Governor able to succeed themselves.⁹

The reconfiguration of the Board's personnel was proposed by Joint

Resolution of the State Legislature in 1895, popularly approved during the elections of 1896, and came into effect in 1897. The constitutional change was proposed primarily to relieve an overburdened State Supreme Court of duties which could be handled more effectively by the executive branch.¹⁰ Further, the establishment of a body made up of Cabinet officers reinforced the pardoning power as an executive prerogative and removed the jurisdictional overlap that occurred when a Justice (or Governor) sitting as part of the Board, considered an appeal for clemency which he had previously denied as a member of the State Supreme Court. Although the Board had five members, no pardon or commutation of sentence could be issued without the approval of the Governor. The proscription on the Governor's ability to succeed himself in the Constitution of 1885, together with the provision of a Cabinet of six other executive officers not appointed by the Governor but all elected separately, and the establishment of a legislature as a coequal body to the Governor's office, even though it met only twice during a Governor's administration, symbolised an acute distrust of a strong state executive. Florida Governors were prevented from dominating the agendas or members of the numerous state agencies, with the exception of the pardon board, over which they exercised a limited veto.¹¹

Sources

Early twentieth-century legal scholars and criminologists were particularly vexed by the question of clemency, the nature of pardons and the potential abuse of the pardoning power, and the possible incompatibility of justice with mercy in particular contexts. James Barnett viewed the continued existence of pardons as an anachronistic hold-over from the divine right of kings that was couched in

‘language suited to the theory of the personal rule of the absolute monarch’, and out of place in a modern democracy ‘where the executive is but an agent of the sovereign’.¹² To minimise the potential for abuse or arbitrary exercise of the pardoning power, most states required pardon authorities to provide annual or biennial reports, subject to legislative and public scrutiny, of pardons, commutations and reprieves.¹³ Florida Governors were required to give biennial reports to the State legislature that listed all pardons, commutations, reprieves and remissions, and which gave the name of the recipients, the crimes for which they were convicted, the sentences imposed, dates and counties of conviction, and the dates when the application was granted. These reports, in conjunction with application registers, clemency decrees, and the biennial reports of the Commissioner of Agriculture, provide essential information for a study of the function and exercise of executive clemency in Florida in the period 1889-1918. This study further utilises a range of official and unpublished primary sources, including pardon board files, convict lease records, prison registers, newspaper reports, census lists, Circuit and Supreme Court records, death penalty files, and official and private correspondence, most of which are located primarily in archive collections at the Florida State Archives, Florida State Library, and the libraries of Florida State University and the University of Florida.

Applicants were required to publish and post notice of their intention to apply for pardon for at least ten days in the county of conviction, and any application (which had to be in writing) also had to include a record of indictment and/or conviction, trial transcripts or a ‘statement of the facts testified to at the trial’, as well as recommendations from the sentencing judge and prosecuting

attorney. Time constraints and overcrowded dockets meant that lawyers, judges and clerks often collected papers and recorded decisions hastily,¹⁴ while circuit-riding was not conducive to extensive or regularised trial record-keeping. Research into the decision-making process of Florida's Board of Pardons is further hampered by the absence of information on the actual deliberations of the Board members, as no official minutes were recorded before 1909. It is however possible to identify the discourses that informed the decision-making process from the application case files which contain copies of court testimony, records of sentence, letters of recommendation for applicants seeking pardons, commutations and reprieves, petitions, and the applications for pardon themselves. Contemporary newspaper accounts provide additional details about offenders and their actions, as well as court proceedings, and while these often sensational narratives must be treated with caution, they provide invaluable insights into popular discourses on the parameters of acceptable and unacceptable behaviour in Florida at this time. A wealth of information is also contained in the Board's correspondence files and in the communications of successive pardoning board secretaries.

Scope of study

This study utilises the documentation which came before the Florida State Board of Pardons as a means of exploring race, gender and class, crime and clemency in one southern State at a crucial stage of its economic and social development. It is not confined to a particular city or county in order to offer comparisons between different jurisdictions. The study focuses on two central questions. Firstly, what decisions were taken to execute or commute the sentences

of those convicted of interpersonal violence in Florida in the period from 1889 to 1918? Secondly, what do pardon applications, their form, language, and rhetorical construction, reveal about Florida society in a period when racial segregation and discrimination characterised southern progressivism? A subsidiary question is thereby revealed. What contexts provided the background both to pardoning policy and the original violence that provoked state action? While this study explores the decision-making process of Florida's State Board of Pardons, it also addresses wider issues of southern crime and punishment, convict leasing, and post-Reconstruction race relations in a state which is often overlooked by historians of the American South.

Overview of thesis

The introduction covers discussion of the secondary literature on pardons, the pardon power in the early twentieth century, and the general context for Florida, such as, the nature of 'Florida society' and politics, of recorded 'crime' in the state, of the prison system and the composition of its population. Chapter One explores the nature and methods of punishment in Florida during the nineteenth and early twentieth centuries, with particular emphasis on the origins and development of the convict lease or contract system, conceived as a means of inculcating habits of industrial discipline and maximising the profits of both southern capitalists and state governments. Prisoners embodied therefore a 'dual identity as objects of correction and of production'.¹⁵ Between 1877 and 1910 all state prisoners were leased to private contractors as there was no physical state prison building; from 1910 successive grades were gradually withdrawn from the

lease and then placed according to classification at the State Prison Farm at Raiford which opened in 1914 or employed in road-building under the supervision of the State Road Department from 1917.

Chapter Two focuses on the men who ran Florida's criminal justice system, attorneys and their clients and the sources of the state's convict population in the period 1889-1918. Pardon Board members were with few exceptions lawyers, often self-made men who became wealthy landowners and planters and/or members of Florida's rising industrial-commercial elite, Methodists, Baptists and Episcopalians, Democrats, Masons, Elks, and Knights of Pythias, and usually enjoyed long careers in state and local politics. The typical state convict was young, male and African American, a portrait that raises important questions about the meaning of 'freedom' in post-emancipation Florida. Decisions of white middle-class pardon board members inevitably reflected dominant white middle-class male evaluations of 'appropriate' and 'criminal' behaviour among lower-class white and black offenders which in turn were shaped by the nature of economic development and the challenges posed by significant population increases. In every decade following the Civil War Florida's population growth far outstripped the national average.

Chapter Three explores the parameters of executive clemency in Florida and its relation to the criminal justice and convict lease systems, the rules surrounding applications for pardon, commutation and reprieve, the strategies employed by convicts and their lawyers to secure the release of the former, and the sources of community and institutional support. Examples of arguments in pardon applications include innocence, service to the state, medical grounds

(playing on the authorities' sensitivity over penal mortality rates), and sufficient punishment. Over a thirty-year period it is possible to detect a shift from an ad hoc application process to one in which regularised strategies and arguments were presented to the Board by attorneys who regularly appeared on behalf of men and women who had access to funds and community support.

Recent work on gender and class has stressed how perceptions of gender and respectability have played a significant role in the attitudes of the courts.¹⁶ Perceptions of race and respectability in particular have impacted on attitudes toward violence, both interracial and intraracial, and the prosecution of criminal acts in the southern states. Respectability could and did influence judges, jurors, and pardon board members, for example, in the view that persons of good reputation with ties to the local community had fewer tendencies to recidivism and thus were deserving of clemency. In Florida, these perceptions are essential to understanding the complexities of clemency appeals in sexual violence cases which are the focus of Chapter Four. Offenders convicted of sexual violence constructed arguments for leniency which played on community opinions of proper and acceptable female behaviour. Such arguments are also evident in the decisions relating to those convicted of acts of murder, manslaughter and assault, which are the focus of Chapter Five. This chapter explores issues of domestic violence and moral culpability in such cases to examine further the gendered boundaries of acceptable and criminal behaviour in Florida in this period. It also examines the strategies and arguments used by attorneys representing female prisoners convicted of interpersonal violence. Finally, the last chapter draws together the main arguments and issues to demonstrate that pardon board cases provide an invaluable

means by which to analyse social mores in Florida in this period, and to offer explanations as to why working definitions of criminality and criminal responsibility were often influenced more by certain tacit assumptions than by written law and procedure.

Secondary literature

Whereas pardons were a subject of debate among most Enlightenment philosophers, Kathleen Dean Moore notes they were consigned to 'relative philosophical obscurity' in the nineteenth and twentieth centuries.¹⁷ Pardons as instruments of public welfare have featured in national controversies, for example, in President Andrew Johnson's decision to issue pardons to thousands of ex-Confederates after the Civil War, President Gerald R. Ford's grant of a 'full, free and absolute pardon' to Richard M. Nixon in 1974, and President Jimmy Carter's pardon of persons who committed non-violent draft evasion offences between 1964 and 1973, and more recently the pardon of Colonel Oliver North. Clemency and pardons have been the subject of many articles in journals defining their scope and function in legal, philosophical and sociological terms, but have received little investigation and consideration in proportion to their importance. Full length historical treatments of clemency in its wider social and cultural context are conspicuous by their absence.

Of the full length studies to date, Natalie Davis's cultural analysis of letters of remission in sixteenth-century France concentrates on narrative techniques and motifs to explore the links between violence, storytelling and pardon. While the locus of this study is the 'crafting of the narrative' it provides insights into the

extent to which authors of letters of remission shaped the events of a criminal act into a story that made sense of their motives and provided a context for their actions that they felt had not been fully addressed in court.¹⁸ The Royal Prerogative of Mercy in mid-Victorian England is the subject of Roger Chadwick's more recent full-length study which explores the operation of clemency in capital murder cases by Home Office bureaucrats and lawyers, and the 'judicial and bureaucratic attitudes towards criminal responsibility' that underlay their construction of an establishment defence of their actions amid the centralisation of English criminal justice during the second half of the nineteenth century.¹⁹ Significant parallels with Florida criminal justice personnel are evident in attitudes toward youth, gender, moral culpability and criminal responsibility, underlining the transatlantic context for many of these perspectives and the debates surrounding them.

Kathleen Dean Moore draws on Immanuel Kant's *The Metaphysical Elements of Justice* to explore the 'retributivist ideal' (legalistic and moralistic retributivism) and its relationship to mercy and the principle of desert, and concentrates on the federal pardon power in the United States. For Moore, 'retributive justice specifies two roles for pardons in a system of punishment: first, pardons are necessary for people who face punishment even though they are not liable to punishment; and second, pardons are permissible for people who face punishment when they are liable to punishment without morally deserving it'.²⁰ Moore focuses on the federal pardon power but as Harold Stoke noted in the 1920s, federalism means that the pardoning power and its effect on crime and society at the state level is more important than at the federal level.²¹ The pardon

power at the state level has featured in few recent works on southern crime and violence; even in Edward Ayers's seminal study of nineteenth-century crime and punishment, executive clemency receives only incidental treatment.²² Clemency in twentieth-century Florida has received some recent scholarly analysis. Margaret Vandiver's sociological study of clemency in pre-*Furman* Florida underlines the pervasiveness of racial bias in relation to the death penalty.²³ In his review of capital punishment in Florida in the same period, Ken Driggs concludes that race was 'the most powerful predictor of those receiving death sentences from the largely all-white, all-male juries'.²⁴

Race was a key determinant in the operation of Florida's criminal justice system between 1889 and 1918. During this period the percentage of black convicts never fell below eighty-five percent and was also a forceful indicator in determining who would receive pardons and commutations. While white prisoners comprised less than fifteen percent of the total convict population in any given year, they received over forty percent of the total number of pardons issued during the period of this study. Pardon board records show how the culture and prejudices of a society, in this case Florida society in the late nineteenth and early twentieth centuries, continued to affect offenders even after conviction. Constructions of criminal behaviour, based on community prejudices and the attitudes of the pardoning board members themselves, informed decisions to grant or withhold clemency to offenders convicted of the sexual and interpersonal violence offences which are the focus of this study.

Letters from prisoners and supporters, as well as petitions and endorsements addressed to the Board of Pardons, the Governor or other individual

Board members, and attorneys provide important insights into class, race and gender relations in Florida in a period of significant economic and political change. Further, while Florida's penal system and her system of criminal law were ideological instruments for white middle class males to reinforce dominance, and to restrict black and lower class freedom, these groups developed successful strategies to challenge restrictions from within the penal system. In his evaluation of the contributions of C. Vann Woodward's *The Strange Career of Jim Crow* to the study of American race relations, Howard Rabinowitz highlighted the problems of using segregation as a primary indicator of the nature of black-white relations in the late nineteenth and early twentieth centuries. He suggested that 'we need to know as much about the fluidity [of black-white relations] during the allegedly rigid period of segregation as we know about the rigidity during the allegedly fluid years'.²⁵ Pardon applications constitute a means of evaluating Rabinowitz's proposition, as well as offering a method of exploring the cultural constructions of criminal activity and violent action in Florida.

Florida's State Board of Pardons was a necessary component of the state's criminal justice apparatus in the late nineteenth and early twentieth centuries due to the general inadequacy of the penal arrangements and the discretionary nature of the criminal justice system. Letters to the pardoning board, to successive governors and to newspapers such as the progressive Democrat Jacksonville *Florida Times Union* and the more conservative *Tampa Tribune* indicate accord among diverse sections of Florida society on the need for harsh punishment for those who committed both violent interpersonal and property offences. Circuit judges imposed sentences of death or life imprisonment in accordance with the

state's statutes, the decisions of all-male juries, and to placate public opinion. The existence of the Board of Pardons allowed them to do this and then recommend leniency at a later date, even following an unsuccessful appeal to the State Supreme Court. The jurisdictional limitations on the courts - for example, where a conviction could not be reversed after a period of time despite newly discovered evidence of the defendant's innocence²⁶ - could also demonstrate the need for executive intervention. Further, even though the due process clauses of the Fifth and Fourteenth Amendments to the United States' Constitution do not apply to the concept of clemency (for example, a decision cannot be challenged if denial appears to be based on race or gender),²⁷ in the interests of justice, Florida like other states, needed an alternative tribunal to consider the grievances and petitions of offenders. The existence of the Board itself, however, also challenged the nature of clemency. As Meah Dell Rothman observes: 'The vesting of the clemency power in the hands of the governor alone conforms to the belief that mercy is an individual act. When a *board* makes a clemency determination, it takes on the appearance of a court'.²⁸

Clemency as a matter of grace could not be challenged in the courts or legislature, except where the clemency authority had exceeded its constitutional power, otherwise such action would violate the separation of powers' principle. There were, however, specific limits on the executive prerogative at the state level. By the mid-1920s, in all but seven states no pardon could be granted before conviction, twenty-seven states forbade a pardon for treason or impeachment, and almost all states required that the reasons for pardon had to be given.²⁹ The clemency hearing and the pardon process were not bound by the substantive,

procedural and evidentiary rules applicable to the courts, while judicial reluctance to review the executive's motives meant the clemency authority's discretion was absolute. No one had a right to a clemency review, so a Board meeting was not a forum for the adjudication of the defendants' rights, nor an appellate court-like proceeding. Rather, a clemency review functioned as 'a corrective of the injustices and imperfect results which must necessarily occur in a legislative and judicial system dependent upon human judgement'.³⁰

The existence of a broad and flexible pardoning power, a 'discretionary, exceptional and unreviewable jurisdiction' beyond the control of the legislative and judicial branches was always open to unrestrained and pernicious action, and severe criticism. It was repeatedly argued in Florida that pardon was a device utilised by offenders with political influence to mitigate the severity of their sentence or secure undeserved early release, and had the unfortunate effect of undermining the goal of reformation. Other complaints centred on the perfunctory conduct of courts where popularly-elected judges imposed maximum sentences to placate public disquiet and secure votes, in the expectation that they could later recommend leniency, and that overburdened governors were unable properly to determine which offenders were fit subjects for mercy.³¹ Successive governors of Florida found themselves having to defend their clemency powers, and in doing so provided their own 'establishment defence' of the pardon power.

In 1907 Governor Napoleon Bonaparte Broward observed: 'The criminal law has no equity side, and the powers of the Pardoning Board are to be considered, therefore, as duties, and not as mere prerogatives. As the purpose of the law is the reformation of the offender rather than his punishment, it has been

deemed wise in the exercise of clemency to make liberal use of the power of granting conditional pardons'.³² Broward described pardon as a necessary incentive to good behaviour that encouraged complete reformation on the part of the prisoner, as when a conditional pardon was granted, 'the fear of being returned to prison life serves to deter [the convict] from a repetition of his offense'. These themes were reiterated by Broward's successor Albert W. Gilchrist who contended in 1911: 'The bright beacon of hope should be held out to all prisoners, giving them to understand that a pardon will be granted upon proper behaviour and upon their showing by their actions that they have endeavored to reform themselves, so that in case their freedom is granted they will become worthy citizens'.³³ In theory, the nineteenth-century division of murder into three degrees of severity which left room for judicial discretion, and early twentieth-century innovations such as indeterminate sentencing, parole and probation were designed to bring equity to the law and eradicate the need for pardons. However, the ad hoc implementation of these changes in Florida may have actually reinforced the continued need for executive clemency.

The expansion of the pardon route occurred in Florida in a period when explicit and meaningful changes in the nature of the pardoning power were taking place at the federal level. In 1833 United States' Supreme Court Chief Justice, John Harlan Marshall, defined pardon as 'an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed' and as 'the private, though official act of the executive magistrate'.³⁴ Florida governors such as Broward and Gilchrist employed a much wider working

definition of clemency than that envisaged by Marshall. The narrowness of the Marshall definition was challenged in *Ex Parte Grossman* in 1925 when United States' Chief Justice William Howard Taft announced:

Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the court[']s power to ameliorate or avoid particular criminal judgements.³⁵

Two years later United States' Supreme Court Justice Oliver Wendell Holmes rejected Marshall's definition completely and took the position that not only was the pardon power 'part of the constitutional scheme', as a check against judicial and legislative excess, but was exercised according to the public welfare: 'When granted it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgement fixed'.³⁶

The public welfare conception of the pardon power had been implicit in the practice of Florida's State Board of Pardons for several years. A pardon was not a 'private act of grace' but rather very much part of Florida's constitutional scheme. A pardon or commutation was in effect a political determination, made by five popularly-elected politicians, that the public welfare would be best served by inflicting a lesser penalty than that decided upon by the court, judge and jury. Attorney General William H. Ellis argued that it was up to critics of the Board 'to show that in a particular case, society was injured by reason of the exercise by the Board of Pardons or the pardoning power'.³⁷ The exercise of the pardon power depended on the political power of the Board while decisions to grant or refuse clemency were political, based on reconciling conflicting views over whether the

public welfare would be best served by the release of individual offenders; as a regular device for release, conditional pardon was in effect part of the constitutional scheme, and based on considerations of public good. While the pardon process reflected political rather than moral considerations, 'political decisions are always taken against a background of mores and sensibilities which, normally, at least, will set limits to what will be tolerated by the public or implemented by the penal system's personnel'.³⁸

Economic and social context

This study of pardons in Florida centers on a thirty year period, beginning in 1889 when the state legislature established a Department of Agriculture and the newly-appointed Commissioner of Agriculture was given responsibility for the management and supervision of state convicts.³⁹ This signified the beginning of a retreat from the laissez-faire approach to government of the Bourbon Democrats and their successors and the beginning of a more interventionist penal policy that came to the fore in the first decades of the twentieth century, particularly during the administrations of Governors Albert W. Gilchrist (1909-1913) and Park Trammell (1913-1917). The state contract or convict lease system, whereby state prisoners were leased to private contractors who were to feed, clothe, work and discipline their charges, and who paid the state an annual fee in return, had been in existence since 1868, and was extended to all state prisoners in 1880. This arrangement covered all persons convicted of felonies in the seven Circuit Courts of Florida and the County Criminal Courts of Record. Those convicted of misdemeanours usually remained under the supervision of the Boards of County

Commissioners in Florida counties which had their own separate leasing arrangements. Although most Florida counties continued to lease their prisoners until 1923, the state contract system ended in 1918/1919, and Florida entered a new era of convict management and state policy; this provides an appropriate ending point for this particular study.

The creation of a separate state agency for agriculture also coincided with the development of the phosphate industry in Florida, which together with naval stores and lumber, was important to the local economies of north and central Florida counties, and provided a pool of southern capitalists in need of a steady and reliable labour force. Four types of phosphate rock deposits were found in Florida: hard rock, principally in Suwannee, Citrus, Columbia and Hernando Counties; land pebble, in Polk, Hillsborough, Manatee and Hardee Counties; river pebble in Polk and DeSoto Counties, hence the formation of the Peace River Phosphate Company in January 1887, purchased by the American Agricultural Chemical Company in 1899; and soft phosphate rock (although this sector was dormant between 1897 and 1917), principally in Citrus and Marion Counties.⁴⁰ By 1892 total production of all types of rock in Florida had reached 287,000 tons, and prior to World War I about forty percent of Florida phosphate, especially high grade rock, was exported overseas.⁴¹ At the same time, Florida produced 31.8 percent of all naval stores products by 1900, and was the national leader from 1905 to 1923.⁴²

In the period covered by this study of the pardon board, the southern states in general entered the national capitalist economy as subordinate partners, and Florida in particular was undergoing far-reaching economic development and

incorporation into the national economy and national politics. The commercial development of extractive industries together with railroad construction and agricultural development attracted settlers in ever increasing numbers. In 1860 Florida's population comprised less than 79,000 whites and 62,000 African Americans, concentrated in the northern and western sections of the state. Florida had few manufacturing enterprises, less than four hundred miles of railway track which did not connect to that of neighbouring states, and an economy almost totally dependent on cattle and cotton. The state was divided into two distinct agricultural sections: the northern part had been associated historically with cotton-raising and slave ownership, while the southern part was associated with the cultivation of vegetable and citrus crops.⁴³

In the 1880s railroads and corporations began to purchase public lands and Henry M. Flagler of Standard Oil opened a series of hotels in St. Augustine and Palm Beach in the 1880s and 1890s that were tied to his railroad development plans. The Flagler railway network reached Miami in 1896 and was extended to Key West in 1912. Previously inaccessible areas and untapped resources in Florida became available to residents and immigrants by rail and road in these decades. Even the freezes of 1886 and 1894-1895 which destroyed citrus crops, and the yellow fever epidemics of 1887 and 1888 did not dash optimism and investment. Dewey Grantham argues: 'Politics in this unfinished state was less conducive to action than was true of certain other southern states. Most Floridians were strongly committed to the economic development of the state and correspondingly reluctant to inhibit the activities and investments of outside corporations'.⁴⁴ In the first decade of the twentieth century, the state's economic

programme was dominated by the movement to drain and reclaim the Everglades, a programme that was championed by Governors William Jennings (1901-1905) and Napoleon Broward (1905-1909).⁴⁵ Shipyards in Jacksonville and Tampa played significant roles in the First World War while the state provided essential lumber, naval stores and food supplies for the national war effort.⁴⁶ These cities had served earlier as important embarkation points for United States' troops during the Spanish-American War of 1898. Florida's population rate continued to rise at more than double the national rate in the early twentieth century, and had reached a total of 968,470 by 1920 (638,153 whites and 329,487 blacks).⁴⁷

Railroad construction, agriculture, turpentine, lumber and phosphate industries acted as magnets luring agricultural labourers from neighbouring states to northern and central Florida in search of work and industrial skills.⁴⁸ Migrant workers were most vulnerable to peonage through the vagrancy statutes, labour laws, convict lease, and Florida's 'law of false promises'.⁴⁹ Florida's definition of vagrancy was wide-ranging and included gamblers, jugglers, 'loafers, idle and disorderly persons', men who lived off their wives or minor children, and 'all able-bodied male persons over the age of eighteen years who were without means of support and remain in idleness'. Under the 1905 statute, 'vagrants' could be arrested without warrant by any sheriff, constable, policeman or law officer.⁵⁰ By the early twentieth century systems of forced labour including peonage were 'intrinsic to the pineywood regions of Florida' as corrupt county judges, law enforcement officials and employers colluded in providing labour contractors with a steady stream of mostly African American and white cracker 'vagrants' and debt-ridden sharecroppers.⁵¹ Such labourers were often young and unmarried

men whose presence was used to explain Floridians' alarm over perceived rising crime rates.

In his 1901-1902 report, Commissioner of Agriculture Benjamin E. McLin asserted that crime was not increasing among the 'real citizenship'. Rather, 'the rapid growth of the turpentine and lumber industries in Florida has caused an influx of a floating population that follows this class of work. From Georgia, North Carolina and Alabama the turpentine and lumber men have been followed by this undesirable and expensive class of people'.⁵² Such views served to justify a penal regime based on hard labour and convict leasing. In his address to the American Prison Association Meeting in Jacksonville in 1921, Commissioner of Agriculture, William A. MacRae, observed:

Certain classes of crime appeal to white and black, while other classes are more frequently committed by the individual race. For example, murder, breaking and entering, burglary, larceny and grand larceny, and the handling of intoxicating liquors, are almost evenly divided between the races, while obtaining money and other property by a false pretense, forgery, arson and embezzlement, are in the majority among white men. Rape, robbery, and perjury, are most common among negro men. A decided majority of female convictions are for murder and manslaughter.⁵³

MacRae's characterisation of crime and criminals in early twentieth-century Florida does not necessarily reflect faithfully actual patterns of crime, but rather the indictment and prosecution patterns of individual counties that appear to follow distinctive racial and gender lines. African American offenders convicted of committing acts of interpersonal violence against whites were the most vigorously prosecuted class of offender and conversely white offenders convicted of offences against African Americans were the least vigorously prosecuted. Intraracial offences fell somewhere inbetween: 'Depending on the circumstances, an act of

physical violence might be appalling, criminal, unfortunate, excusable, legal, or even laudatory. Judicial attitudes towards interpersonal violence depended on a number of factors: the motive, the relationship and relative status of the victim and assailant, the weapon used, and whether the incident occurred in public or private'.⁵⁴

Committal rates for the period 1889-1914 show that breaking and entering (2273), larceny (1199), assault to murder (1156), grand larceny (1116) and murder (1042) account for the largest number of offenders. MacRae provides confirmation that 'Murder, assault, attempt to murder, breaking and entering, burglary, larceny and grand larceny, cover 79 3/5 [sic] per cent. of the crimes of all our State prison population'.⁵⁵ There is a steady increase in committals for all offences over the thirty year period,⁵⁶ but Commissioner MacRae refuted any suggestion that these rates of reported 'crime' necessitated concern: 'On the contrary, there were only 59 more convictions [in 1920] for in [sic] the year 1901, notwithstanding the fact that the population has increased during this period from 528,542 to 966,210, or 84 per cent. While the population thus increased in those twenty years, crime increased only 14.7 per cent'.⁵⁷ Yet, Florida was a violent and sometimes disorderly state. In August 1900, the Jacksonville *Times Union* complained: 'Scarcely a Saturday or Sunday has passed within three months that a murder has not been committed in [Duval] county, and the past two days have not been exceptions, a murder being committed on each of them'. The five lynchings in Tampa during the period 1900 to 1940 represent 'one of the largest numbers recorded for any major city in the South'.⁵⁸ During the Tampa cigarworkers' strike of 1910 which lasted several months, two Italians were

lynched, there were several shootings, and leaders of the striking union were kidnapped by a self-appointed Citizen's Committee and forcibly deported to a deserted beach in Honduras.⁵⁹

There were wide fluctuations in rates of violent disorder and reported crime in Florida in this period. For example, MacRae observed: 'The largest number of convictions during any one year from 1901 to 1920 was in 1915, when there were 639 convictions, and the smallest number was 300, in 1918'.⁶⁰ Initially, the outbreak of war in Europe in 1914 seriously disrupted American trade as export markets contracted temporarily, and one consequence was a heavy fall in phosphate rock production. In fact in August 1914 the various phosphate operators in Florida either suspended operations or reduced production substantially, with enormous repercussions for the local labour force. The high number of convictions in 1915 is inevitably tied to the economic dislocations caused by the war but the phosphate industry recovered swiftly. The combined effects of the war, an influenza epidemic that swept the state in 1918 (also 1919 and 1920), and the impact of black migration from Florida to northern states helps account for the reduced number of convictions in 1918.⁶¹

Not only did African Americans account for the growing number of Florida convicts in the decades after the Civil War, as in Georgia, they tended to be convicted in plantation belt or urban counties, usually for petty offences that 'challenged the rigid racial proscriptions of agricultural districts' or upset the racial balance of New South cities.⁶² In Florida offenders from urban areas were continually viewed as more intractable, insolent and hostile to law and order. This in part reflected the often violent character and reputation of Florida's major cities.

Newspaper reports of Jacksonville in the 1880s 'complained of wide open gambling, shootings, and of the practice of young men walking around the streets armed with pistols and other deadly weapons', and the city had the second highest homicide rate in the United States by the mid 1920s.⁶³ MacRae remarked that, 'Jacksonville, the county seat of Duval county, is the main gateway into Florida from the northern and western states, and while Duval county has only a little more than ten percent of the state population, yet she contributes twenty percent of our state prison population, and less than one percent of prisoners convicted in her courts were born in the county, and a large number are non-residents of the state'.⁶⁴

Florida's cities developed in distinctive ways in the late nineteenth and early twentieth centuries. With a population of 28,429 in 1890 and 57,699 in 1910, Jacksonville was Florida's largest city.⁶⁵ Its two major industries were lumber mills and cigar manufacturing, but it was also a thriving Atlantic port city, a major centre for the export of turpentine and lumber and an important railroad hub. Between the Great Fire of 1901, which destroyed most of the downtown area, and World War I, Jacksonville acquired the reputation of a prosperous and progressive New South city, a process in which white middle class women played a key role as did an assertive Board of Trade (renamed the Chamber of Commerce in 1914), composed of the leading white professional men and business leaders.⁶⁶ But, by 1916, the city had become the Florida centre for African Americans, dissatisfied with conditions in the South, who were migrating to northern states. As James Crooks observes:

Jacksonville developed as two cities in the years after the fire, one white and one black. One city was largely prosperous, creating a

commercial gateway to Florida by steamship and rail, developing a regional distribution center for the Southeast, and expanding financial services to provide capital for further development statewide . . . The other city contrasted sharply with the prosperous one. Its residents were mostly poor, worked in low-skilled jobs, and lived in crowded slums. They lacked the resources and opportunities of the white city.⁶⁷

Fifty-seven percent of Jacksonville's population was African American. By 1900 sixty-five percent of white residents were classified as white collar workers while seventy-seven percent of black residents were semiskilled or unskilled workers. Seventy percent of black women in Jacksonville worked in domestic or personal service sectors, in laundries or as servants and nurses.⁶⁸ Jacksonville's geographic position, its role as a railroad and port hub for migrating workers and tourists, the rapid turnover of population and the difficulties of establishing long-term community ties, and the growing divide between rich and poor, black and white, all contributed to the city's reputation for violence and its reported crime figures.

The decision in 1886 by Vincente Martinez Ybor to move his cigar-making factory from Key West to Tampa transformed the community from 'an obscure self-contained backwater port' with a few hundred inhabitants to 'an integrated, modern industrial complex' of 37,782 residents by 1910. 'Tampa was an island in the South: a Latin enclave in a region dominated by native Southerners, an industrial town amidst rural poverty'.⁶⁹ By the beginning of the twentieth century, Tampa had emerged as Florida's premier industrial centre and 'the unrivalled producer of clear Havana cigars for the world'; only lumber and naval stores accounted for more of the region's manufacturing output than cigarmaking.⁷⁰ The cigar industry attracted skilled and unskilled workers of

Italian, Spanish and Cuban origin. Immigrant women, especially Italians, played a significant role in the cigar labourforce. Female wages contributed to the family wage economy and freed male wages and capital for investment in the trades or small businesses necessary for upward mobility and economic independence.⁷¹ Cigar making led to the creation of a unique community, Ybor City, 'a company town financed by foreign capital; an industrial community amidst a rural South; and a Latin workforce in a state dominated by WASPs', that was held together by 'a vibrant Latin culture, infused with a set of distinctive work rhythms, and accentuated by a heightened political consciousness'.⁷²

While rural Hillsborough County and white Anglo-Protestant Tampa residents were vexed by the mass presence of Catholic foreigners in their midst, Tampa's leading Anglo merchants and families initially welcomed the cigar industry and the thousands of Italian, Spanish and Cuban workers although the relationship between the communities was always strained by hidden prejudices and suspicions.⁷³ 'Benevolent paternalism' characterised the symbiotic relationship between cigar factory owners and their craft workers during the 1890s, as owners 'cared deeply for the welfare of their workers, who were also their countrymen'⁷⁴ and were instrumental in providing support for employees bound up in the criminal justice system. By the early twentieth century, these paternalistic cigar *patrones* were dead and a new industrial leadership emerged. In the context of changing social and labour relations, Ybor City and West Tampa experienced 'a series of protracted and violent struggles for power' between workers and management in the first three decades of the twentieth century.⁷⁵

From the arrival of the Louisville and Nashville railroad in the 1880s to World War I, Pensacola emerged as a major exporting sea port city on the coast of the Gulf of Mexico, and materialised as a 'New South' city in the decades before World War II.⁷⁶ Pensacola was a leading export city for yellow pine and 'a commercial hub for surrounding farm areas'.⁷⁷ It did not become an industrial city in the same way as Jacksonville or Tampa 'primarily because of inherent geographic and economic disadvantages' as the principal industries, naval stores and lumber, were in decline by 1910 and were not replaced. After the opening of the Naval Air Station in January 1914, the local economy became increasingly geared to military needs.⁷⁸

Colburn and Scher note the importance of Florida's political size and geographic diversity to the state's political and social development in the twentieth century: 'not only are population centers widely separated, but their dissimilar economics and ethnic groupings have helped give rise to different kinds of political cultures', which together with sustained heavy migration rates have contributed to Florida's 'atomized system of factional politics'.⁷⁹ It is therefore often difficult to characterise Florida as a homogenous entity or describe a single 'Florida society', especially as different parts of the state were often at different stages of economic development; this is particularly true for the late nineteenth and early twentieth centuries. Jacksonville was not a homogenous urban entity while Ybor City was not a unitary Hispanic community but a formation of several Italian, Spanish, Cuban and Anglo subcommunities. The city of Miami, incorporated in 1896 and boasting a population of five thousand by 1910, contained a distinctive black population that included, 'in addition to migrants

from Georgia and the Carolinas, a sizable number of Bahamians, who had been brought to work on agricultural plantations and subsequently in railroad and hotel construction', and was largely confined to a northwestern section of the city, called 'Colored Town'.⁸⁰

Economic indigence and political powerlessness characterised the condition of the majority of African Americans in Florida (43.6 percent of the population in 1900) in this period. This had not always been the case, as in the 1880s and 1890s African Americans in Jacksonville had experienced a transitional period between the full suffrage of the Reconstruction era and total disfranchisement by the early twentieth century.⁸¹ After 1900, however, state politics 'became one-party, Democratic, and white'. The weakness of the Republican party in Florida after the 1880s was one factor behind the unstable and highly factionalised nature of state politics, the other was the struggle within the Democratic party between a traditional predominately rural or agrarian and northern wing and a more urban and progressive wing generally associated with the southern part of the state, a split that became more marked as the twentieth century advanced and the southern regions played a major role in the commercial and economic expansion of the state.⁸² In spite of Florida's geographic, demographic and economic diversity, its physical size and internal contradictions, these different, often opposing political factions, geographically set apart, operated within a common political organisation that was committed to the maintenance of white supremacy and black inferiority. Sectionalism has featured heavily in Florida politics, and has influenced markedly the attitude of candidates running for office: 'In the first two decades of the twentieth century a Democratic candidate could readily secure the

nomination [for Governor] without campaigning south of Ocala'.⁸³ State Representatives and Senators from rural, north Florida counties could be unsympathetic to the needs of Florida's burgeoning urban populations.

The integration of Florida into the racial, political and economic mainstream did not eradicate its distinctive features, while gender and class relations were deeply affected by new capital formations and subsequent punishment regimes. Leasees were required by law to report to the Adjutant General and later the Commissioner of Agriculture on numbers, characteristics, treatment and death rates of the convicts in their charge. These biennial reports provide essential demographic information on the prison population in these years. The Adjutant General reports also give details of prisoners' occupations prior to incarceration; the majority of convicts were classified as labourers, farmers and house servants; others as cook, ostler, school teacher, carpenter, shoemaker, teamster, wagoner and fireman. White convicts seem to have been predominately 'crackers' or transients. These reports demonstrate that no convicts were large landowners, businessmen or government officials; those incarcerated were working people, black and white. The vast majority of convicts were from Florida, but nearly one quarter came from Georgia.

That African American, foreign-born and lower-class white Floridians were more likely to be arrested, indicted, convicted and sentenced to death or imprisonment at hard labour than white middle-class native-born males is hardly surprising. The police, the courts and the prison system remained under upper and middle-class white control in the one-party state. African American, foreign-born and lower-class white offenders had to appeal to upper and middle-class male

sensibilities, sympathy, sense of duty and honour in carefully formulated ways if their pleas for clemency were to have any chance of success. While the men who sat on Florida's Board of Pardons and who ran the machinery of the criminal justice system, had distinct ideas as to what comprised acceptable or criminal behaviour and as to who might be of a likely criminal type, it is nonetheless difficult to second-guess their execution of executive clemency. Both the application of the law and pardon process were subject to human fallibility and individual discretion.

1. "Executive Clemency in Capital Cases," *New York University Law Review* 39 (January 1964): 137-138.
2. *Revised Statutes of the State of Florida* (1892), Chap. 3467, Sec. 1. [adopted 27 February 1883].
3. Meah Dell Rothman, "The Pardoning Power: Historical Perspective and Case Study of New York and Connecticut," *Columbia Journal of Law and Social Problems* 12 (Fall 1975): 158.
4. D. Lang to Dr. Max Lederer, 12 November 1908, Florida, State Pardon Board, *Incoming Correspondence*, Box 1/ Folder 2. Record Group 690. Series 269. Florida State Archives, Tallahassee, Florida, hereafter cited as IC. The power of the State of Florida to rearrest and return to the state prison to complete the unexpired portion of a sentence in the event that a pardonee failed to comply with the conditions of his release was upheld by the Florida Supreme Court in *State v. Horne* (1906). W. H. Ellis to Hon. St. Clair A. Mulholland, 7 January 1907, vol. 7, p. 60, Florida, Department of Legal Affairs, *Attorney General Correspondence, 1881-1913*, 13 vols. Record Group 650. Series 628. Florida State Archives, Tallahassee, Florida, hereafter cited as AGC.
5. Rothman, p. 155.
6. Florida, Report of the Commissioner of Agriculture, 1905-1906, p. 315, Florida State Library, Tallahassee, Florida, hereafter cited as RCA.
7. Florida, State Pardon Board, *Pardon Application Dockets and Registers, 1874-1917*, 4 vols. Record Group 690. Series 270. Florida State Archives, Tallahassee, Florida, hereafter cited as PADR.
8. Florida Constitution 1885, Article IV, Section 11.

9. Florida Constitution 1885, Article V, Section 12; D. Lang to Dr. Max Lederer, 12 November 1908, IC Box 1/ Folder 2.
10. RCA, 1893-1894, p. 68; Florida, *Journal of the House of Representatives, 1901*, Florida State Archives, Tallahassee, Florida, p. 16, hereafter cited as House Journal.
11. David R. Colburn and Richard K. Scher, *Florida's Gubernatorial Politics in the Twentieth Century*, (Tallahassee, F.L.: University Presses of Florida, 1980), pp. 121, 155, 159.
12. James D. Barnett, "The Grounds of Pardon in the Courts," *Yale Law Journal* 20 (1910): 137.
13. Austin W. Scott, Jr. "The Pardoning Power," *Annals of the American Academy of Political and Social Sciences* 284 (1952): 97; Rothman, "The Power to Pardon," p. 199.
14. D. Lang to Mr. C. J. Hardee, Atty, Madison, Fla., 30 September 1897, *Outgoing Correspondence*, Vol. 3, p. 27. Record Group 690. Series 269. Florida, State Pardon Board, Florida State Archives, Tallahassee, Florida, hereafter cited as OC.
15. Alex Lichtenstein, *Twice The Work of Free Labor: The Political Economy of Convict Labor in the New South*, (London and New York: Verso, 1996), p. 151.
16. For example, Carolyn A. Conley, *The Unwritten Law: Criminal Justice in Victorian Kent*, (Oxford: Oxford University Press, 1991); Ann-Louise Shapiro, *Breaking the Codes: Female Criminality in Fin-de-Siecle Paris*, (Stanford, C.A.: Stanford University Press, 1996); Elaine S. Abelson, *When Ladies Go A-Thieving: Middle-Class Shoplifters in the Victorian Department Store*, (New York: Oxford University Press, 1989); Laura F. Edwards, "Sexual Violence, Gender, Reconstruction, and the Extension of Patriarchy in Granville County, North Carolina," *North Carolina Historical Review* 58 (1991): 237-260.
17. Kathleen Dean Moore, *Pardons: Justice, Mercy, and the Public Interest*, (New York and Oxford: Oxford University Press, 1989), p. 7.
18. Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France*, (Stanford, C.A.: Stanford University Press, 1987).
19. Roger Chadwick, *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian Britain*, (New York and London: Garland Publishing, Inc., 1992).
20. Moore, p. 129.
21. Harold W. Stoke, "A Review of the Pardoning Power," *Kentucky Law Journal* 16 (1927): 35.

22. Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*, (New York and Oxford: Oxford University Press, 1984), pp. 204-208.
23. Margaret Vandiver, "Race, Clemency and Executions in Florida: 1924-1966," Ph. D. thesis, Florida State University, 1983.
24. Ken Driggs, "A Current of Electricity Sufficient in Intensity to Cause Immediate Death: A Pre-*Furman* History of Florida's Electric Chair," *The Stetson Law Review* 22 (Summer 1993): 1170.
25. Howard N. Rabinowitz, "More Than the Woodward Thesis: Assessing *The Strange Career of Jim Crow*," *Journal of American History* (December 1988): 848.
26. Scott, p. 97.
27. "Executive Clemency in Capital Cases," p. 141.
28. Rothman, "The Pardoning Power," p. 183.
29. Stoke, pp. 36-37.
30. "Executive Clemency in Capital Cases," p. 178.
31. Edwin H. Sutherland, *Criminology*, (Philadelphia: J. B. Lippincot, 1924), p. 502.
32. *Governor's Message*, House Journal, 1907, p. 38.
33. *Governor's Message*, House Journal, 1911, p. 40.
34. *United States v. Wilson*, 32 U. S. (7 Pet.) 150, 160-161 (1833), reaffirmed in *Ex Parte Wells* (1856), quoted in G. Sidney Buchanan, "The Nature of a Pardon Under the United States Constitution," *Ohio State Law Journal* 39 (1978): 36, 39.
35. *Ex Parte Grossman*, 267 U. S. 87, 69 L. Ed. 377 (1925), quoted in Ernest Morris, "Some Phases of the Pardoning Power," *American Bar Association Journal* 12 (1926): 183.
36. *Biddle v. Perovich*, 274 U.S. 480, 486 (1927), quoted in Buchanan, p. 36; Buchanan, pp. 45-47.
37. W. H. Ellis to Marlan Upson, 29 August 1905, AGC 5: 701.
38. David Garland, *Punishment in Modern Society*, (Oxford: Clarendon Press, 1997), p. 214.
39. Charlton W. Tebeau, *A History of Florida*, (3rd. edition, Coral Gables, F.L.: University of Miami Press, 1991), p. 292.

40. Arch Fred Blakey, *The Florida Phosphate Industry: A History of the Development and Use of a Vital Mineral*, (Cambridge, Mass.: Harvard University Press, 1973), pp. 16, 21, 42.
41. Thomas Gamble, "The Naval Stores Industry of the South," *Manufacturers' Record* 24 (11 December 1924): 326.
42. Stanley C. Bond, "The Development of the Naval Stores Industry in St. Johns County, Florida," *The Florida Anthropologist* 40 (September 1987): 189.
43. Blakey, p. 14.
44. Dewey W. Grantham, *Southern Progressivism: The Reconciliation of Progress and Tradition*, (2nd edition. Knoxville, T.N.: The University of Tennessee Press, 1987), p. 64.
45. Colburn and Scher, pp. 210-211.
46. Michael Gannon, *Florida: A Short History*, (Gainesville, F.L. : University Press of Florida, 1993), p. 74.
47. Donald B. Dodd and Wynelle S. Dodd, *Historical Statistics of the South, 1790-1970*, (Alabama: The University of Alabama Press, 1973), pp. 14-15.
48. In 1900 manufacturing/extractive industries in Florida accounted for the following numbers and percentages of wage earners: lumber 7,081 (21%); turpentine 15,073 (44%); railroad 958 (3%); total 34,230. See Edward L. Ayers, *The Promise of the New South: Life After Reconstruction*, (New York and Oxford: Oxford University Press, 1993), p. 455.
49. Laws of Florida, 1891, Ch. 4032, pp. 57-58; Robert N. Lauriault, "From Can't to Can't: The North Florida Turpentine Camp, 1900-1950." *Florida Historical Quarterly* 57 (January 1989): 318; Jerrell H. Shofner, "Forced Labor in the Florida Forests, 1880-1950." *Journal of Forest History* 25 (Fall 1981): 15. The 1891 law stipulated that anyone who accepted money or property 'on a promise' to undertake 'service' and then abandoned their employer 'without just cause' was guilty of a misdemeanour and liable for a fine or up to one year imprisonment.
50. Harry B. Skillman, comp., *The Compiled General Laws of Florida, 1927*, vol. 4 (Atlanta, G.A.: The Harrison Company, 1928), pp. 3632-3633.
51. Fred Cubberly, "Peonage in the South," *The Independent* 55 (9 July 1903): 1616-1618; Miller H. Karnes, Miller Handley, "Florida's Convict Lease System, 1866-1923," M.A. thesis, Florida State University, 1993, p. 65; Gordon N. Carper, "The Convict Lease System in Florida, 1866-1923," Ph.D. diss., Florida State University, 1964, pp. 304, 317; Gene Burnett, "Florida's Penal System Was Once Unrivalled for Brutality," *Florida Trend* 22 (July 1979): 134-138; Lauriault, p. 318. Carper argues that in Florida 'the convict lease system directly led to and brought about peonage.' 'Vagrants' were arrested by local police, arraigned in

police or magistrates' courts, induced to plead guilty to minor offences by employers' agents in conspiracy with court officials. In return, they would avoid imprisonment in the county jail and their fine would be paid by the agent. While working off the debt, the individual was guarded as a convict labourer and the debt was perpetuated by various means. Any labourer who escaped and was recaptured had to work off the original debt and the costs of recapture. As of 1905 Florida counties also profited from the state lease system as they received a percentage of the profits according to how many convicts had been convicted in that county.

52. RCA, 1901-1902, p. 61. Migrant workers were also blamed for public health scares over smallpox. For example, 12,500 cases of smallpox were reported in the first six months of 1900, especially around the mining community at Dunnellon, Marion County. The State Health Board was active in a universal vaccination 'crusade' and disinfection programme with very positive results. See House Journal, 1901, pp. 130-134.

53. Proceedings of the Annual Congress of the American Prison Association, Jacksonville, Florida, 1921, (New York: Wynkoop Hallenbeck Crawford Co., c1922), pp. 262-263, hereafter cited as APA Proceedings.

54. Conley, p. 44.

55. APA Proceedings, p. 262.

56. See *Reports of the Commissioner of Agriculture, 1889-1914*.

57. APA Proceedings, p. 261.

58. Robert P. Ingalls, *Urban Vigilantes in the New South: Tampa, 1882-1936*, (Gainesville, F.L.: University Press of Florida, 1988), pp. 207-208.

59. George E. Pozzetta, "Immigrants and Radicals in Tampa, Florida," *Florida Historical Quarterly* 57 (January 1979): 335, 340.

60. APA Proceedings, p. 262.

61. Gannon, p. 74; Colburn and Scher, p. 222.

62. Lichtenstein, *Twice the Work of Free Labor*, pp. 70, 85.

63. Richard A. Mann, *The City Makers*, (Jacksonville, F.L.: Convention Press, Inc., 1972), p. 156; Frederick L. Hoffman, *The Homicide Problem*, (Newark, N.J.: Prudential Press, 1925), p. 97. Jacksonville's homicide rate for 1924 was 58.8 per 100,000, second only to that of Memphis (65 per 100,000), when the median national rate was 12.5 per 100,000.

64. APA Proceedings, p. 263.

65. U.S. Department of Commerce and Labor. Bureau of Census, *Thirteenth Census of the United States, 1911*. Volume II, (Washington, D.C.: Government Printing Office, 1913), p. 298.
66. James B. Crooks, *Jacksonville after the Fire, 1901-1919*, (Jacksonville, F.L.: University of North Florida Press, 1991), pp. 69, 73.
67. Ibid., p. 43.
68. Ibid., pp. 14, 35.
69. Gary R. Mormino, "Tampa and the New Urban South: The Weight Strike of 1899," *Florida Historical Quarterly* 60 (January 1982): 338-339; Dodd and Dodd, p. 76.
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72. Mormino and Pozetta, "Immigrant Women in Tampa", p. 300; Mormino and Pozzetta, *Immigrant World*, p. 75.
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79. Colburn and Scher, p. 23.
80. Alejandro Portes and Alex Stepick. *City On The Edge: The Transformation of Miami*, (Berkeley, C.A.: University of California Press, 1993), p. 76.
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82. Colburn and Scher, pp. 12-13.

83. Ibid., p. 24.

CHAPTER 1

REINVENTING THE PENITENTIARY: PUNISHMENT IN FLORIDA

The prisoner, being a debtor to society and the law, for having violated the rules of both, must pay the penalty in servile labor; first as a punishment, second as a means of reformation, by practical experience, teaching the offender that, "The way of the transgressor is hard".¹

As criminals, they have forced heavy expense upon the law-abiding and should return, in so far as is a reasonable demand, a recompense by their labor. With Shylock, we may demand the pound of flesh and obtain it to our dishonor. Reasonable hire that can afford proper care and treatment, is humane, proper and honorable.²

I consider the Prison System of Florida the best in the South. I think that our prisoners are being better treated and better cared for and have a great deal more protection than the same class who are free.³

In the nineteenth and early twentieth centuries the states in the American South developed their own discretionary system of justice which often appears anomalous with that of northern states. For example, one of the most notorious features of the so-called 'backward South' in this period was the penal strategy, based on hard labour and convict leasing.⁴ Convict leasing was 'a penal system unique to the postbellum South'.⁵ It reflected the continued sense of separate

southern identity and 'represented both the remnants of the old order of slavery, with its repressive labor relations, and the new order of industrial capitalism, with its concentration in labor-intense industries'.⁶ It acted as a bridge between the displaced agricultural slave economy and a nascent industrial one in a free labour society. The convict lease system also combined the traditions of the pre-Jacksonian prison and the workhouse by merging incarceration, corporal punishment, and hard labour, with southern traditions of labour exploitation and race subordination.

The adoption of leasing as the dominant mechanism of penal practice appears retrogressive in the light of the establishment of the penitentiary in the antebellum South. By the 1830s the penitentiary had become the 'basic mechanism' for punishing criminals throughout the United States as successive states abandoned public for private punishments amid a fundamental reconceptualisation of the causes of crime and purposes of punishment.⁷ Much of the scholarship has spotlighted northern institutions, but all the southern states except the Carolinas and Florida built penitentiaries in the first half of the nineteenth century.⁸ Southerners debated the 'justice and utility' of the penitentiary, but a majority of them considered that the institution clashed with their ideals of republicanism, since it required the surrender of individual rights to state authority and thus smacked of despotism and coercion. Yet, republicanism also made the penitentiary a logical and acceptable innovation in that it offered certainty of punishment and the promise of reformation.⁹

This chapter explores the nature and methods of southern punishment in the second half of the nineteenth century and early twentieth century, when

corporal and capital punishment remained essential elements of the criminal justice framework. Florida, which is the particular focus here, was the last southern state to establish a penitentiary in 1868,¹⁰ forty years after the other southern states, and at a time when the promises of reform and rehabilitation of inmates in the ideals of the Auburn and Pennsylvania penitentiary systems had been eclipsed by custodialism.¹¹ Florida was also the last of the former Confederate states to adopt fully the system of convict leasing in 1880, was one of the last to give it up in 1923, and is often singled out as the worst example of a convict leasing state.¹²

Michel Foucault argues that during the hundred years between the mid eighteenth and mid nineteenth centuries 'the entire economy of punishment was redistributed' whereby 'penal detention replaced public execution as a calculated technique for altering individual behaviour' and what replaced public executions were 'carefully articulated disciplinary mechanisms - at least in principle'.¹³ For the United States in the same period, Louis Masur uses the debates over public executions and the role of capital punishment in a nascent republican society as the medium through which to explore the impact on American culture of a burgeoning and influential middle class that was concerned with public space and public order, that valued privacy and self-control, and that found the spectacle and rituals of public hanging repugnant and threatening to the social order. At the core of these debates were competing visions of 'man and society'; the sinful and depraved being versus the moral, reasonable and salvageable individual, reflecting the eclipse of Puritanism by Enlightenment ideals and liberal theology. Masur further argues that middle-class sensibilities impacted on the technology of the

gallows as 'the bourgeois ideal that fostered seclusion and restraint manifested itself in the creation of an enclosed trap door, a device designed to insulate spectators from what many viewed as the most revolting part of the ritual'.¹⁴

After the 1830s executions in northern states increasingly took place behind prison walls in front of an invited group of spectators. By 1845 all the northeastern and mid-Atlantic states had shifted away from faith in community rituals of corporal punishment and public execution to the ideal of private punishment. In 1847 Michigan became the first state to abolish capital punishment entirely; Rhode Island followed suit in 1852 and Wisconsin in 1853.¹⁵ In contrast, the Territory of Florida retained five largely public methods of criminal punishment for non-slaves: fines, imprisonment in county jails, whipping, pillory, and death; and four methods for slaves: cropping, branding, nailing to a post by the ears, and death.¹⁶ The Legislative Council of the Territory of Florida had mandated public hanging for those convicted of murder, rape and arson 'not less than thirty or more than fifty days after conviction' in 1822. Public hanging was retained by the first Florida state legislature in 1847; this was a sparsely populated frontier state remote from debates over penitentiaries and capital punishment, and from middle-class anxieties over the spectacle of public punishment.¹⁷ When Florida's criminal law and procedures were re-enacted after the Civil War, public hangings were not mandated but continued in practice in many counties. After 1872 executions were increasingly carried out behind the walls of county jails located in the county of conviction, under the supervision of the local sheriff,¹⁸ an indication of increased concern with public disorder; simultaneously there was a retreat from public punishment to corporal punishment within the confines of

isolated convict camps.

Foucault argues that at the beginning of the nineteenth century, 'the great spectacle of physical punishment disappeared; the tortured body was avoided; the theatrical representation of pain was excluded from punishment. The age of sobriety in punishment had begun'.¹⁹ But, while legal executions for the most part had retreated behind the walls of state prisons and county jails by the late nineteenth century, the great spectacle of physical punishment and the tortured body continued in southern states through the convict lease, the chain gang and in the practice of lynching. Scholars note the increasing sadism of southern lynch mobs in the early twentieth century and the continued infliction of punishment to the body, the endurance of torture, pain and horrifying spectacle,²⁰ a 'technique' not governed by any legal code of pain (as is pre-Revolutionary France), but rather 'an extreme expression of lawless rage',²¹ an event with its own protocols and theatricality. In the late nineteenth and early twentieth centuries, lynching was 'a community ritual that demonstrated and reinforced white unity' against the perceived threat of black aggression and 'drew its repressive power from the extraordinary caste solidarity it expressed'.²² In the 1890s lynchings greatly outnumbered legally-imposed executions under either state or local authority, but by the 1920s the majority of executions in the United States were state-imposed.²³ In contrast, from 1900 to 1930 the State of Florida led the nation in the lynching of African Americans, with a rate of 4.5 lynchings per 100,000 African Americans, which was twice that of Mississippi, Georgia and Louisiana, and three times that of Alabama, and there were no convictions for lynching in Florida before 1934.²⁴

Nevertheless, the substitution of imprisonment for corporal punishment in the eighteenth and nineteenth centuries is recognised as a major penological change by contemporary observers and historians alike. Until relatively recently most historians viewed the modern prison as an 'enlightened alternative' to the savagery of colonial modes of corporal and capital punishment and the 'barbarous' English criminal code of the eighteenth century, and emphasised a moral consensus on reform.²⁵ The 'implicitly teleological bias' of traditional histories was challenged by Rusche and Kirchheimer in 1939,²⁶ and in the revisionist works of the 1960s and 1970s, of Foucault and Rothman, for example, that stressed the relation between new strategies of power and social crises and economic transformation. For Foucault the deviant individual became the object of a new disciplinary apparatus of power/knowledge while Rothman emphasised a new objective of punishment: the transformation of criminal personality. As Michael Ignatieff observes: 'The prison was thus studied not for itself but for what its rituals of humiliation could reveal about a society's ruling conceptions of power, social obligation, and human malleability'.²⁷

In his provocative work, *The Discovery of the Asylum*, David Rothman explores the social context of the Jacksonian 'revolution in social practice'. Disillusioned with the deterrent approach adopted by penal reformers after the American Revolution, the Jacksonians 'invented' penitentiaries, asylums, almshouses, orphanages, and reformatories in the 1820s. They viewed the penitentiary and the asylum as novel solutions to a crisis of disorder wrought by emergent capitalism, urban-industrial changes, and the rise of wage labour. Rothman locates the origins of the penitentiary movement in the debates over

competing systems of incarceration: the Auburn or congregate system versus the Pennsylvania or separate system, both of which sought to reform their charges. Officials organised the penitentiary and the asylum around the doctrines of isolation, obedience and productive labour, resulting in a quasi-military routine permeating every aspect of institutional life.²⁸

The anti-revisionist debate of the 1980s and 1990s challenged the tendency towards social reductionism in these works, questioned the validity of the concept of 'social control', and the language of subordination that permeated much of this scholarship.²⁹ For example, Adam Hirsch mounts a robust challenge to Rothman's interpretation of the origins and development of the penitentiary system, and the notion that the penitentiary represented the major ideological innovation of the period from 1780 to 1830. Hirsch focuses on Massachusetts to argue that the ideology of incarceration has its roots in sixteenth-century English ideas of punishment at hard labour and had been embraced by Americans long before the Jacksonian period; and the ideological context for the penitentiary in America was actually black slavery. He disagrees with historians who interpret the prison as a means of enhancing state power, arguing that the central objective of the Jacksonians was crime control rather than class control. Hirsch further offers a very different view of the Jacksonians, who 'reared' rather than 'invented' the penitentiary, but did establish its administrative viability; they were much more practical and less misguided than Rothman would have us believe.³⁰ While this study raises important questions about the debate over prisons and the penitentiary, and suggests new research directions, it is not a definitive refutation of Rothman's analysis. Yet, Hirsch's interpretation is ultimately more useful in understanding

the taxonomy of convict leasing in the postbellum South. Further, Matthew Mancini's recent work provides a synthesis of the many state studies on convict leasing illustrating shared patterns and commonalities across the South, and enables an evaluation of the apparatus of convict leasing as a whole.³¹

Florida's State Prison System

During Radical Reconstruction, Florida's Republican-dominated state legislature established the first state prison. The Constitution of 1868 was the first to provide for the establishment of such an institution.³² In his message to the State Assembly in July 1868, Governor Harrison Reed, voicing concerns over state expenditure on the criminal justice system, recommended the establishment of a penitentiary as the 'best system of punishment ever devised'. It would save state money, and accomplish 'in great measure, one of the first objects of punishment - the reformation, and the inculcation of habits of industriousness and systematic labor with the criminal'.³³ Reed argued that the state's inability to punish its criminals and the costs of criminal prosecution had been compounded by the general insolvency of offenders, unable to pay their fines and then 'confined in idleness' in county jails for expensively long periods after conviction. He reported that the cost of criminal prosecutions for 1867 amounted to \$58,408.59 which was 'equal to the interest for one year at six per cent. on nine hundred and seventy-three thousand dollars - a sum exceeding the bonded debt of the State', and the Treasury had received less than two thousand dollars in fines. Reed concluded that placing convicted offenders in jail, 'has simply resulted in daily expense without the most remote probability of a payment of fines imposed; the

consequence has been that the Governor has found it necessary to exercise the pardoning power to save the State from bankruptcy'.³⁴ Reed recommended utilising the former federal arsenal at Chattahoochee as the penitentiary, the nucleus of the state's penal arrangements during the Reconstruction period.³⁵

As in other states during the antebellum period, the strongest supporter of the penitentiary was the governor, and it was state legislators who created the institution. Edward Ayers concludes it was these groups together with newspaper editors and many planters that viewed southern criminal justice systems as inefficient and barbaric; and regarded the penitentiary as an 'enlightened' and 'civilized' solution to the region's penal problems. Thus, the penitentiary served the class interests of 'the best people' of the antebellum South in that 'it "proved" the benevolence of the men who ruled, demonstrated that fair and equitable punishment flourished under their aegis, showed to the world that the slave South was not the barbaric land its detractors claimed'.³⁶ In the context of postbellum Florida, the penitentiary embodied a similar set of class, racial and 'humanitarian' agendas.

After its post-Civil War conversion to housing civilian offenders 'employed at hard labor', Chattahoochee continued to be governed as a military post, and officers and guards held military rank.³⁷ Two years after its inauguration the Governor recommended that a civilian administration be established. The resulting legislative act of January 1871 authorized the prison to be:

conducted on the congregate plan, in the full sense of the term, the prisoners not being separated day or night, unless when placed in solitary confinement. They occupy one common dormitory, eat at one table and work together. As far as practicable, strict silence is preserved, no prisoner being allowed to speak, unless to ask for information in regard to his work.³⁸

Chattahoochee is described as a 'prison' rather than a 'penitentiary' and fused the congregate and military systems.³⁹ The 1868 law establishing the state prison gave responsibility for supervision of the institution to the Adjutant General (and further underlined the military character of the penal regime), subject to the overall control of the Board of Commissioners of Public Institutions, which comprised the Governor and Cabinet members.⁴⁰ The succeeding Constitution of 1885 called for the creation of a Department of Agriculture, subsequently established by the Legislature of 1889. Article IV, Section 26 of the 1885 Constitution listed supervision of the State Prison as one of the duties of the newly-created Commissioner of Agriculture. One reason for the transfer of convict supervision from the Adjutant General to the Commissioner of Agriculture was concern over the management of the prisoners. In 1888 Adjutant General David Lang informed his wife:

The Legislature is finding so much fault [?] of the management of the Convicts and Asylum, that I would not be at all surprised if the convention changes the whole management, putting the convicts under a Warden who would be obliged to live at the penitentiary, and the Asylum under a Supt. Who would be obliged to lived there, either of these would suit you or I . . . I unfortunately come in, at a time when the office is under a good deal of odium from neglect and mismanagement, and just before the assembling of a convention, which has the power even to remove the Governor.⁴¹

The vesting of prison supervision with the Commissioner of Agriculture was an anomaly as the Board of Commissioners of State Institutions supervised all other state institutions, and was later corrected by the 1913 State Convict Law, under which the Board of Commissioners of State Institutions, of which the Commissioner of Agriculture was a member, assumed management and

supervision of the State Prison. Responsibility for day-to-day supervision of the Prison Division remained within the duties of the Commissioner of Agriculture after 1913.⁴²

Florida prison conditions of the 1870s have some parallels with 1790s' prisons in Massachusetts, New Jersey and Connecticut where prisoners lived together in large rooms and mingled freely in common dining areas. However, institutional life in Florida was not as 'casual, undisciplined and irregular' as Rothman suggests that it was in these earlier northern prisons.⁴³ Under the civilian administration of Chattahoochee, there was one guard, watchman or turnkey for every six prisoners working outside the prison in fields and on railroad construction, and one per twenty five inside the prison. While a credit system allowed prisoner to earn up to eight days per month commutation of sentence, strict adherence to discipline was maintained by the warden.⁴⁴ Influenced by former Florida convict camp boss, J. C. Powell's late nineteenth-century exposé of the state's penal arrangements, Florida historian, William T. Cash, writing in the 1930s, was highly critical of the running of the state prison at Chattahoochee where 'conditions were so disgusting and disgraceful as to be almost unbelievable' for the hundred prisoners located there.⁴⁵ Cash charged that the prisoners were neglected and that the warden used the \$20,000 legislative appropriation for the prison to enrich himself. He also charged the warden with cruelty: 'After he had extracted every ounce of toil from his unfortunate prisoners that flesh and blood could stand, he would then inflict punishments upon them for failing to perform their tasks - punishment worse than the agents of the Czar of Russia inflicted on prisoners sent to Siberia'.⁴⁶

From 1868 to 1877 the chief administrator at Chattahoochee was Malachi Martin, former Irish immigrant, retail goods merchant from New York City, U.S. Army quartermaster, and agent of the Freedman's Bureau in Florida. In November 1868 Martin was selected as the first commanding officer of the newly-created penitentiary and continued as warden of the civilian prison after February 1871.⁴⁷ Martin has been repeatedly characterised as an alcoholic fortune-hunter and a brutal and corrupt prison administrator.⁴⁸ However, Mildred L. Fryman's evaluation of Martin is significantly different from that of Powell, Cash and more recently Mancini. During the military administration, Martin did operate a rigorous system of discipline involving punishments ranging from reprimands to solitary confinement, but was cleared of charges of cruelty by prison inspectors. Fryman found no evidence that Martin plundered the prison coffers, noting that as Florida approached bankruptcy in the early 1870s it could barely afford to raise enough appropriations to pay for the prison or Martin's annual salary of \$3,000.⁴⁹ Martin did however improperly use convict labour to construct buildings on his homestead and did neglect his charges as he became increasingly preoccupied with his viticultural enterprises and Republican political interests in the 1870s.⁵⁰ Yet, Fryman concludes:

Disgraceful physical conditions, inadequate legislative support, and the failure of the convict-lease system to be implemented quickly all helped generate the shabby reputation acquired by the Chattahoochee penitentiary. As warden, Martin's activities, as well as his scruples, attracted criticism, some of which appears to have been merited. Martin's transgressions cannot be fully assessed due to the absence of thorough documentation, but it is clear that his regime was not, as Powell asserted, 'one of almost unrelieved brutality'.⁵¹

Martin's administration appears to have been tarnished by his Republican political

activities. The Democratic-controlled legislature of 1877 was hostile to an institution created by the previous Republican administration, under the direct charge of a Republican-appointed 'carpetbagger' warden, and associated with Reconstruction.⁵² Further, the prison had not met legislative expectations that it should be a self-supporting institution.

From its inception Florida's state prison was viewed as an essential source of income for the state. The 1868 law establishing a state penitentiary also authorised the contracting out of convict labour to private employers, legalising an unofficial antebellum practice.⁵³ Complaints over continued high prison costs led the Reed administration to permit the Adjutant General to lease state prisoners to planters and railroad contractors in 1870; forty-four Florida prisoners were sent to the Great Southern Railroad in 1873.⁵⁴ The 'cautious experimentation' with short-term leases in agricultural and railroad sectors took place in a period of economic and political uncertainty, hence the gradual and uneven development of convict leasing as a temporary expedient in the 1860s and 1870s. Further, as the Republican administration faced an empty treasury, a large war debt, and a costly state prison, economics were at the centre of the debate over convict leasing from the start,⁵⁵ while the use of convict labour in railroad construction demonstrated the economic possibilities and potential profitability of leasing to entrepreneurs in other industries.

The Bourbon Democrat Drew administration (1877-1881) moved to relinquish all authority over state convicts and essentially 'privatize' its penal system; the Legislature of 1879 abolished the state prison and authorised the leasing of all state convicts. The first lease arrangement commenced in 1880,⁵⁶

after which time, private employers, usually southern capitalists, were to feed, clothe, work and discipline Florida's state convicts, paying the state an annual fee for each person convicted of a felony. A public bidding procedure was established under the direction of the Adjutant General (then the Commissioner of Agriculture after 1889), and convicts became commodities to be leased every two and later every four years to the highest bidder, who in turn usually subleased them to other contractors. The system was characterised by a lack of control and numerous abuses, and encouraged speculation, yet leasing became an 'expedient solution' not least because after 1879 there was no physical building in which to house state convicts, and the state had no alternative but to lease its convicts.⁵⁷ Further, leasing's financial attractiveness ensured its extension to county prisoners in Florida in the 1880s.⁵⁸ The 1880s and 1890s witnessed the emergence of a more permanent system in the absence of alternatives and after the profitability of convict leasing was recognised.⁵⁹ In Florida, as in Georgia, the conservative southern white Democrats 'embraced and benefitted from a penal system whose corruption, brutality, and economic program they insisted on associating with their erstwhile enemies, the Radical Republicans'.⁶⁰

Recent scholars emphasise that the lease revolved around labour rather than criminal punishment *per se* and as such was not necessarily a retrogressive institution.⁶¹ In response to contemporary views and the portrayal by subsequent historians' of leasing as a dishonourable and anti-modern feature of the New South,⁶² Alex Lichtenstein characterises convict leasing as 'a new forced labor system that was wholly compatible with a particular vision of economic development and the continuation of racial domination - a form of "modernization"

acceptable to planter and industrialist alike'.⁶³ In the 1880s and 1890s Florida's economy embraced industrial development, and there was the beginning of an important shift in emphasis from agriculture to industry (predominately extractive and citrus) and trade. Turpentine and other naval stores, lumber and phosphate were Florida's principal exports in the 1890s, all from industries that utilised convict labour. When supervision of state convicts was transferred from the Adjutant General to the new Commissioner of Agriculture in January 1889, 558 convicts were contracted to Suwannee County turpentine operator Major Charles K. Dutton.⁶⁴ On 1 January 1890 all state convicts were turned over to Edward B. Bailey following acceptance of his bid of \$22.50 per convict per annum. Bailey used some convicts in his phosphate operations in Columbia and Suwannee Counties, and subleased the remainder to naval stores operators in Columbia and Lafayette Counties.⁶⁵ From 1894-1898 convicts were divided between three leasees and worked by phosphate and naval stores operators in Columbia, Levy, Alachua, Suwannee and Sumter Counties.⁶⁶

As convict leasing became increasingly concentrated in phosphate and coal mining in states such as Florida, Georgia, Alabama and Tennessee, so its perpetuation reflected the greater stability of southern politics and its importance to an evolving southern industrial economy. Ultimately, 'convict labor helped to create and mold crucial parts of a new industrial economy' of Florida, and made New South industrial take-off possible in the last third of the nineteenth century.⁶⁷ Cigar manufacturing was the only Florida industry of significance that never sought a convict labour force, largely because of the level of skill required and foreign-born domination of the workforce that would not have tolerated

convict labourers in their midst. At the same time, the practice of convict leasing provided southern capitalists with opportunities to influence state penal policy, illustrated, for example, by Commissioner of Agriculture Lucien B. Wombwell's observation in 1892: 'It would be much better for contractors, and therefore enhance the value of convict labor, if no person should be sent to the State prison for a shorter period than one year . . . Three or six months in the State prison is no punishment, and you will now find convicts there serving from the second to the fourth or more terms'.⁶⁸ In industries such as coal or phosphate mining or naval stores production, short-term prisoners would serve out their sentences before learning the necessary skills. State officials were faced with the task of balancing the courts' ideas on appropriate punishment for state convicts with economic considerations and the desire of the leasees of state convicts for profit.

Convict supervision and treatment

Following the transfer of supervision for state convicts from the Adjutant General to the Commissioner of Agriculture in 1889, official reports in the 1890s and 1900s dutifully declared that state convicts were well-cared for, well-fed and adequately clothed, and that most of the problems lay with the unregulated county convict lease system.⁶⁹ Commissioner Wombwell was at pains to present the leasees as respectable and benevolent: 'The convict camps are in [the] charge of sober, reliable and humane men. The contractors are careful in the selection of sober, and reliable men for guards. Nearly every camp has an attending physician'.⁷⁰ However, the Commissioner of Agriculture's own reports over the years contradict these confident pronouncements. The 1895-1896 report, for

example, notes 'grave complaints' over the treatment of convicts at one of the sub-leasee camps near Summerfield in Marion County.⁷¹ Some form of state inspection of camps was increasingly necessary. Convict supervisors or inspectors were state officers appointed to oversee the welfare of the state prison population and who stood between the leasees and the labourers, yet their effectiveness was limited. In 1895 state convict inspector Colonel W. R. Moore was appointed to visit camps on a monthly basis and 'examine as to food, clothes, medicine, medical attention, and treatment of convicts'. Within a year an extension of his duties had been proposed. He was to ensure that contracts with leasees were complied with, was to further oversee camp management and treatment of convicts, and to recommend to the pardon board those prisoners deserving of clemency.⁷²

When Benjamin E. McLin took over as Commissioner of Agriculture in 1900, the prison system was overhauled: camps were disbanded, and captains and guards were discharged following complaints of abuses and corruption, indicating the persistence of long standing problems and the continued ineffectiveness of regulation.⁷³ In a report to the Legislature of 1901, an investigative committee appointed by Governor Bloxham to review the prison system admitted: 'While the improvement has been and is all that could be expected under the present system, it does not meet the demands of an enlightened convict system in accord with the more humane treatment of prisoners'.⁷⁴ But 'humanity' had its limits. An editorial in a Tampa newspaper in 1906 accepted the need for vigilance against cruel and inhumane treatment by unscrupulous lessees but warned against 'super-sentimentalism' over convicts:

It should not be forgotten that these camps are places of punishment for convicted criminals to do penance for their sins, and that punishment, to be effective, must be something to be dreaded, something that hurts, otherwise they would be popular resorts for degenerate vagabonds, just as some of our jails are during the winter season.⁷⁵

In 1907 the Board of Commissioners of State Institutions increased the number of Supervisors of State Convicts from one to four following recommendation from Governor Broward, partly because of the growing prison population and more widely dispersed convict camps, but also because of official acceptance, based on both moral and political considerations, that the State had a duty to maintain ultimate control over its convicts even in a largely privatised state penal system. Letters of application to Governors from prospective convict inspectors, ranging from Baptist ministers and teachers, to naval stores operators and county convict supervisors, attracted by a regular paying state post with a good salary, emphasise character, honesty and integrity but reveal that applicants had little actual practical experience of convict labour and convict management.⁷⁶ State officials issued directives every year, inspections were made and regulations were tightened regularly, but infractions of the rules continued, largely because Florida's contract system was privatised and leasees kept changing, so state authorities had limited means of ensuring proper treatment of prisoners. One convict complained in 1916: 'When on turpentine I was fed on sour beans, bread and a small piece of fat bacon, half cooked full of sand and ants',⁷⁷ further indicating the continued impotency of state regulation.

One important improvement nonetheless was the establishment of a Central Hospital for the State Prison System at Ocala in Marion County in 1903. Dr. Simeon H. Blich was appointed State Prison Physician and Surgeon of the new

facility. He received an annual salary of \$600 paid by the Florida Naval Stores and Commission Company, and an additional \$500 for his travel expenses, met by the other leasees and the State. Blich was to inspect each Monthly Division of new prisoners at the headquarters or 'concentration' camp at Dunnellon before they were dispatched to individual convict camps, visit each state convict camp at least once a year, and coordinate the removal and return of sick or injured prisoners between the camps and the Central Hospital at Ocala. The appointment of a prison physician was considered a 'radical departure from former methods', which relied on leasees and managers adhering to directives from the Commissioner of Agriculture to build hospital facilities at every camp, and to ensure that water closets, bath tubs and cells were regularly cleaned to safeguard the health of Florida's prison population. Too often such directives were ignored:

There certainly must be a hospital at a camp where there are as many disabled as at this camp. There was a very sick man at this camp when it was inspected who had not had a physician, and I suppose it is the same one that has since died. Call their attention to the fact, that the law requires them to furnish a capable physician when there is sickness in the camp.⁷⁸

Sick, diseased and incapacitated convicts in individual camps placed extra demands on guards and required daily attendance by physicians. These additional costs together with the economic losses from an unproductive convict labourer further underlined to leasees and prison officials the economic benefits of a centralised hospital facility. Medical reports on the physical health of prisoners and the sanitary conditions of camps also illustrate that there was a gap between the directives and the physical conditions of the camps that could have a detrimental impact on convicts' mental and physical well-being.

In 1903 Blich reported that seventy-seven 'decrepid [sic], chronic and

worn-out' prisoners were sent from the camps to the Central Hospital, of which twenty-nine were returned to the lease, and moreover that sixty percent of those admitted to Ocala would have been 'a total loss without benefit of treatment'. Of the new arrivals at Dunnellon, concerns over poor health meant that thirty-five of 377 prisoners were immediately detained at the Central Hospital: 'This would indicate that these unfortunates are [sic] monthly sent to State Prison from the various courts in Florida have not received proper attention',⁷⁹ while confined in county jails. Supervisors of State Convicts investigated the deaths of prisoners at the hands of guards, escapes, and the general health of convicts; they reported their findings to the Commissioner of Agriculture. Information on the sanitary conditions of camps provided in their reports and letters illustrate the recurrence of concerns about camp sleeping quarters (in both stockades and road camp vans) as cheap mattresses were 'harbors for bed bugs', while kitchens were infested with vermin.⁸⁰

While such concerns permeate reports issued by prison officials in Florida, they did not dent officials' faith in the state's penal arrangements, and descriptions of Florida's prison system to organisations such as the National Prison Association contain a rather different message. In his report on the NPA Convention of October 1903, Dr. Blich informed Commissioner McLin that 'it was conclusively proven and acknowledged' that Florida's improvements in the care and treatment of its prisoners meant that the state, 'stood first among the group of "Lease System" states, first, far and beyond any second, in point of average health and death pro rata, that "tuberculosis", the great scourge of the Northern prison was practically unknown, and that the several death dealing diseases of these

institutions were entirely unknown in the Florida State Prison'.⁸¹ He continued:

The great need of a general States Prison Tuberculosis Hospital where the poor unfortunates of the great prisons of the Country could be collected and treated struck me so forcibly at this meeting, both from the point of humaneness to the individuals to be treated and for the benefit of posterity, that I have since concluded that our Board of Commissioners of State Institutions could, if legal and other obstacles could be removed, do the grandest[,] noblest and most humane act of the history of this great county, if the life giving air and sunshine of Florida could be offered to the tuberculosis prisoners of all States.

Prison officials in the early twentieth century consistently asserted that Florida had one of the lowest penal mortality rates in the United States; fourteen percent for African American convicts and nine percent for white convicts in 1904. This was attributed to open air prison labour in Florida's 'splendid climate' and the 'wonderfully improved' stockades with good sanitary provisions, while the dispersed nature of the camps and their prison populations of up to fifty persons meant that prisoners were 'not subject to epidemic diseases as would be the case if the prison population was congested at one central point'.⁸² Blich believed that the penal death rate for Florida would be lower still 'if it were not for the fatal syphillitic [sic] taint that is so common among the negroes of the younger generation and their tendency to consumption, both caused from their low habits of living in the center of congested populations'.⁸³

Official records list the names of 502 state convicts who died while incarcerated in the State Prison System between 1889 and 1910. Critics of convict leasing charged that other deaths went unrecorded as the bodies were surreptitiously and illegally buried in unmarked graves. Where cause of death is given, sixty-three (12.5 percent) of convicts died from tuberculosis or consumption. Other diseases and ailments listed include: pneumonia, dropsy and

Bright's Disease, malarial fever, syphilis, typhoid, and heart disease,⁸⁴ many of which can be directly connected to conditions of life and labour in marshy, malaria-infected and generally unhealthy environments centring on the extraction of turpentine and other naval stores. At least sixty-two convicts were 'killed' by collapsing walls and mineshafts, explosions and other industrial accidents which, together with incidences of lung complaints especially among those serving out their sentences in underground phosphate mines, further illustrates the physical hazards of captivity and penal servitude. Convict camp captains and guards were not medical experts and the health and safety of their charges were not necessarily their primary concern.

Discipline and Surveillance

The calibre of men employed to guard state convicts was a constant source of concern for Commissioners of Agriculture who carried overall responsibility for prison camp personnel, even though they were recruited by private contractors. The state was reluctant to abandon totally those convicted in state courts to the arbitrary control of any leasee or contractor. In a directive to the Florida Naval Stores and Commission Company in 1902, Commissioner McLin noted the lack of discipline among captains and guards who needed to familiarise themselves with the rules. He reminded lessees that convicts were not to be worked before sunrise and had to be back in barracks by sundown and he ordered that camps should be cleaned and beds made up daily: 'Where you find good dicipline [sic] and proper behavior upon the part of the guards and captains, there you find good conduct, good work, cheerful prisoners, and few complaints upon the part of

prisoners'.⁸⁵ From 1903 guards were required to complete application forms (which required a degree of literacy not previously expected) and sign an oath, so they became State Police.⁸⁶ Yet, fourteen years later, Commissioner MacRae admitted in 1917 that 'the pay provided for guards does not secure the class of men [Superintendent Purvis] would like to have' at the State Prison Farm.⁸⁷ Most guards appear to have been lower-class whites, local residents familiar with the piney woods and mining areas in which convict camps were located. When two black guards were employed at a convict camp at Fairbanks in Alachua County in 1905, convict supervisor N. A. Blich requested that they be replaced with white guards. The camp owners sought reconsideration on the basis that the black guards' work was satisfactory and that they wished to retain these employees; this suggests that leasees did not see policing race relations as part of their responsibilities.⁸⁸

Corporal punishment was a central feature of the lease in all southern states while the 'subordination of all penal functions to the single goal of labor extraction gave convict leasing its unique character as a particularly brutal penal system'.⁸⁹ In Florida, prisoners were reprimanded for a variety of reasons - swearing, cursing a guard, or 'bad talk', 'laziness', unsatisfactory work, unfinished tasks, escape, and disobedience (the most common offence) - and officially received between nine and thirteen lashes or 'licks' administered by the captain, who was to ensure that prisoners were not lacerated.⁹⁰ Other punishments included sweating in a wooden sweat box, watering, and stringing a prisoner up by his thumbs with strong cords attached to wooden crosspieces nailed to upright posts.⁹¹ Complaints about excessive punishment permeate letters to successive

Commissioners of Agriculture and Governors, and appear in official reports. In the early twentieth century, convict inspector J. D. Ferrell noted that during inspection visits to camps he made it a rule physically to examine prisoners. At Dowling Park Naval Stores Company camp in 1913 he found that six convicts in one squad of eleven 'showed signes [sic] of Laceration. I took this matter up with the Captain, he explained that this was a squad he could get no work out of and had to punish them'.⁹² Ferrell's report implies that pressure from owners on camp captains to achieve production targets accounted for much of the problem, but such observations can also be read as attempts on the part of convicts to circumvent the control of the lease over their conditions of life and labour.

Foucault views punishment as a 'complex social mechanism', while discipline is a technology, a way of exercising power. His conception of power is rooted in terms of technology, tactics, and strategy of a 'disciplinary society' which 'invented technologies of subjection and the methods of surveillance that the prison both inherits and exemplifies'.⁹³ At the heart of his conceptual framework is the body-mind dichotomy. His argument for the disappearance of the public spectacle is hard to reconcile with the everyday realities of southern penal systems. One early twentieth-century commentator declared: 'Twice there appeared on the streets of Orlando (as pretty, prosperous, and law-abiding a town as could be found in New England) wrecks of what once were men - decrepit, with their backs scarred, their clothes in rags, shoeless, their feet splintered and swollen with the ugly wounds of the saw-palmetto'.⁹⁴ Foucault's body-mind dichotomy is further challenged by the technology of power within the lease. As Ayers observes: 'The lease was terrible, but in an archaic way; the bosses were

content to punish the body and let the mind think what it would'.⁹⁵ Corporal punishment remained a central tactic of the 'technicians of discipline' in Florida's convict camps, but not a feature exclusive to southern penal practices, so it cannot be seen as just another sign of the backwardness of the American South.

Convict camps embodied an 'apparatus of knowledge' derived from their 'disciplinary subjects' and incorporated opportunities for regimentation, subjection, observation and surveillance.⁹⁶ All convict and peonage camps maintained a conspicuous racial hierarchy: the majority of turpentine hands and phosphate miners were black, while guards, overseers and 'captains' were usually white. Surveillance was an integral feature of the convict camp, although there was no architectural expression of this technique in the camps (nineteenth-century convict camps were usually crude wooden stockades with inadequate living, working and sanitary conditions), thus the function of the gaze was different from northern penitentiaries with their massive walls, individual cells, workshops and exercise yards. Convict camp security depended on chains, dogs, convict 'trusties' (usually black men) and guards (white men) armed with repeating rifles. Prisoners in convict camps maintained their own informal hierarchy of labourers, from incorrigibles to trusties, identified by the stripes on their uniforms (regular convicts wore uniforms with horizontal stripes while trusties' uniforms had vertical stripes).⁹⁷ The trusty system embodied hierarchy, knowledge and surveillance as trusties were selected convicts who obeyed camp rules and were 'model prisoners', who established a rapport with the camp captain, and who thus were granted various privileges, such as reduced work responsibilities, the handling of firearms and dogs, and the ability to leave the camp. They were used to infiltrate the

labour force, could be ordered to shoot those attempting to escape, and were expected to look out for government officials on inspection visits.⁹⁸ At the same time, trustees needed to secure the cooperation of fellow convicts so they may have acted as go-betweens for convicts and captains, turned a blind eye to certain activities and even assisted in some escapes.

Discipline and Punish describes all social relations in the language of power, domination and subordination, and like many of the earlier discussions of the prison as a 'total institution' overlooks individual self-regulation and resistance that are crucial to understanding convict leasing. Convicts could and did attempt to circumvent the control of the lessee through escape and acts of self-defence, 'silent sabotage', and through the proliferation of convict work songs ('metaphors' for the black penal experience).⁹⁹ Over-reliance on corporal punishment by captains determined to extract labour and obedience could be counterproductive in sparking individual and collective acts of resistance or defiance. State Prison Physician R. A. Willis believed that one state prisoner 'had deliberately placed his hand upon a wagon wheel, and nearly severed it with a hatchet', ostensibly because of his determination not to work.¹⁰⁰ Convicts also bargained within the system, as is evidenced by the longevity of the trusty system, and lodged complaints with convict inspectors and governors, for example, in letters from black and white convicts at the J. Buttgenbach phosphate camps at Florida City requesting that they be not sent to turpentine farms.¹⁰¹ Mary Ellen Curtin notes: 'Women convicts resisted white authority in prison by complaining, being insolent, defying orders, and escaping. But in order to survive prison, black women carved out valued relationships with male prisoners, children, and each other'.¹⁰²

Miller H. Karnes describes the development of a predominately African American convict culture in Florida's turpentine camps that was characterised by minstrels, dancing, singing, religious practices, gambling and oral storytelling. Like Curtain, he argues that the evolution of this subculture constituted an essential means of convict camp survival.¹⁰³ The convict camp was full of subcultures engaged in varying degrees of self-regulation, negotiation, resistance and accommodation.

Florida's State Prison System was incredibly porous. A more popular route out of prison than pardon was that of escape. Between 1889 and 1915 there were 1194 reports of convict escapes, including several of convicts who made more than one attempt even though swift punishment on recapture was inevitable. Between 1889 and 1915 at least twenty-six state convicts were 'killed' or 'shot' in the act of attempting to escape. Prison Physician, Dr. G. W. Lamar, investigating the death of Henry Hernandez at a camp near Tampa, reported that two shots were fired over Hernandez's head, and the third entered his body to the left of the spinal column where the lead ball lodged in the right kidney. Hernandez is described as an 'unruly man' with a 'jealous disposition' who was angered by his wife's failure to reply to his letters. In Lamar's opinion, the guard, J. S. Allen, had acted properly but lacked discretion: 'In this class of people it is a hard matter to get persons of much discretion'.¹⁰⁴

During these twenty-six years 632 convicts successfully escaped, while 562 convicts were recaptured. Between 1890 and 1901, twenty-five percent of escapes ended in recapture (with eight percent in 1900 and seventy-seven percent in 1899 representing the two extremes). McLin rejected the argument that 'cruel and inhumane treatment' was the root cause of attempted and actual escapes. He

attributed an unusually large number of escapes (78) in 1902 to inexperienced guards and managers because of the establishment of a new lease, and to the type of offender entering the prison system:

The number of commitments (449) was greater than for any previous year, a majority of which were from the cities, and of a class of transient, idle, loitering criminals, who had never tried to earn a livelihood from the sweat of their brow, many of whom would risk being shot by a prison guard, while trying to make their escape, rather than to submit to the sentence of the law and be forced to do manual labor.¹⁰⁵

McLin argued that 'prisoners of long years of confinement' rarely attempted to escape and were 'now too ready to give praise to the improved conditions that surround them' in the state's convict labour camps.¹⁰⁶ Information on escapes suggests that many convicts contemplating such action did so during their first year of incarceration, but long-term prisoners were also just as capable of breaking out during the later stages of their sentences, and the open-air conditions of labour made escape easier to contemplate than from enclosed northern penitentiaries. In 1902 the Florida Naval Stores and Commission Company spent \$4000 on blood hounds and established a "Bertillon" type classification system to assist in the apprehension of escaped convicts. Prisoners were photographed and their physical characteristics were noted during the initial processing stage at the Dunnellon headquarters camp.¹⁰⁷ Following the introduction of classification systems, photographs and \$100 rewards, the recapture rate rose to an average of fifty-four percent for the years 1902-1915 (even in 1902 the recapture rate was forty-nine percent). An additional method of identification, fingerprint records, was introduced in 1916.¹⁰⁸

Convict leasing did not remain static; the early years were characterised by

coercion and the drive for economy and efficiency at all costs, while later years saw the introduction and extension of incentives such as free Sundays, paid extra work, and commutation or 'gaintime' schedules, and later parole and probation mechanisms.¹⁰⁹ Gaintime was a system of incentives whereby a convict demonstrating good behaviour or meritorious conduct received a credit of a specified number of days per month that was deducted from his or her sentence by the Commissioner of Agriculture, and later the Board of Commissioners of State Institutions, and was supported by leasees. Gaintime increased with every year of prison service. For example, under the 1911 law, a prisoner was eligible for a credit of two days per month in the first year of sentence, three days in the second year, and so on, rising to fifteen days per month in the tenth and all subsequent years of sentence. A prisoner who attempted to escape or did escape forfeited all gaintime credit.¹¹⁰ Gaintime schedules, escape rates and the piecemeal introduction of 'paroles' meant that convicts who did not benefit directly from the pardon power did not necessarily serve out their full sentences in Florida's State Prison System.

In spite of its porousness and the increasing expense associated with record-keeping and policing their charges, the lease was attractive to southern capitalists because it ensured a stable labour force (through disciplinary mechanisms) in industries characterised by high labour turnover and unpredictability, and kept production costs at a low enough level to attract further capital investment (even during the depression years of the 1890s).¹¹¹ Wages offered to free labourers were not high enough to attract sufficient numbers for a reliable enough workforce while certain industries such as turpentine production

commonly were viewed as suitable for convict labourers. Nevertheless, leasing was an inherently inefficient system of labour exploitation or racial control: leasees had to take all convicts, including sick and pregnant, feeble and infirm, old and young, female and male, black and white, even in slack times. The presence of these groups in convict camps circumvented the efficiency of the lease, hence the demands by leasees to accept only able-bodied (usually black) male convicts, and their support for alternatives such as hospitals and prison farms. In Florida leasees were willing to pay for the removal of unproductive 'dead hands' from the lease, as the establishment of the Central Hospital at Ocala demonstrates. Perhaps leasing can be viewed in terms of 'associative social control', an effort to shape or change behaviour but involving continued free association of individuals and opportunities for withdrawal.¹¹²

Race, Class and Labour

Recent works on crime and punishment emphasise how class, race, ethnicity, and gender shape the commission of offences, the attitudes of the courts and of reformers, as well as forms of discipline and long-term incarceration.¹¹³ Race and class were the principal determinants in the criminal justice system of postbellum Florida, and the penal system acted as a powerful sanction against freedmen and women who challenged the racial order. That the convict lease system was an important part of a system of racial subordination is illustrated by the fact that the percentage of African American convicts never fell below eighty-five percent in the late nineteenth and early twentieth centuries, and the typical convict was a young, adult African American male labourer, when African

Americans comprised less than fifty percent of Florida's total population.¹¹⁴ Lucia Zedner observes that in England the Victorian concept of the 'criminal class' was founded on highly emotive notions of predatory and dangerous portions of the population who did not merely commit criminal acts but who were by definition vicious in character.¹¹⁵ By the last quarter of the century, degeneration was increasingly regarded by many medical writers and social commentators as the cause of crime, destitution and disease in European countries and there was a consensus of opinion that the problem of habitual crime was worsening.¹¹⁶ Such concerns were also found in the New South where the 'criminal class' was overwhelmingly drawn from the African American and poor white communities: it had a distinctive racial and class character, at a time of growing adherence to the hardening "scientific" racial views of the late nineteenth century.¹¹⁷

During the 1880s and 1890s exposés of convict leasing appeared more frequently in newspapers, journals, national prison association reports, and state documents, partly as a result of the Populist and Progressive agendas.¹¹⁸ Nevertheless, Governor William D. Bloxham declared his support for the convict lease system as the majority of Florida's prisoners were 'largely a race not characterized by a superior capacity for invention, or manufacturing industries'.¹¹⁹ Twenty years later, the Commissioner of Agriculture noted that black males constituted 'a very large percentage of Florida criminals . . . [and] . . . as a class [the African American] has a dull or poorly developed moral sense, and lacks mental activity, but as a rule he is a more docile prisoner than the white man'.¹²⁰ Florida governors, like their constituents, usually composed of middle

and upper-class conservative and business-oriented voters, viewed African Americans as a distinctly inferior race to whites who could not be trusted with democratic responsibilities, and should be segregated (they could be equally condescending in their attitudes towards Italians and Cubans). Such views reflected the rural backgrounds of the majority of governors and their constituents. Racial segregation and discrimination were defined by both custom and law, and it was politically inexpedient for late nineteenth and early twentieth-century governors to advocate racial moderation.¹²¹ Such views and political factors also contributed to the perpetuation of the lease.

At the turn of the century emphasis on racial segregation within the state prison system increased, mirroring events in Florida and southern society as a whole, as a new 'economy' of relations of power between the races was conceived in the decades after the Civil War and Reconstruction. From 1889 a series of 'Jim Crow' laws were passed by successive Florida legislatures. These introduced a poll tax, required segregated educational, transport and other public facilities, and forbade racial intermarriage. Transgressions were punishable by fines and jail sentences.¹²² The 'Jim Crow' system of racial segregation, discrimination and exclusion embodied its own technologies of surveillance and interlocking networks of disciplinary techniques that permeated southern society. By 1900 white and black prisoners were no longer allowed to eat together or sleep in the same cells, while female prisoners occupied a separate cell, set apart from their male colleagues. By 1905 criminal justice personnel were forbidden to fasten white and black prisoners together, under penalty of a \$100 fine or six months' jail sentence.¹²³ While laws were passed to ensure segregation of railway and

streetcar carriages, and other public accommodations in the 1880s and 1890s, Florida's State Prison System was not subject to the same proscriptions until around 1910. During the Gilchrist administration (1909-1913) the state signed a four year lease with the Florida Pine Company, part of a Delaware corporation, which specified that convicts should be segregated according to race and gender.¹²⁴ Recommendations from camp owners for black guards and black chaplains were rejected by Commissioners of Agriculture.¹²⁵

Changes in governors and prison officials' justifications for leasing are evident after 1900: leasing was increasingly presented as humane, efficient and a necessary corrective for Florida's 'unfortunate class' of criminals. Unemployed prisoners languishing in a state penitentiary were financial burdens to the state. Idleness was also thought to breed insanity.¹²⁶ In response to critics of Florida's convict lease system, Governor Jennings declared:

The question of labor within prison walls, or labor in the fields, mines, mills and on turpentine farms, while condemned in some sections, under proper restrictive legislation the employment of convicts in the open air should have a more humanizing influence on prisoners than confinement within prison walls. There can be no question that the sunlight, healthy and balmy air, and out-door exercise is beter [sic] for the health of the convicts than confinement in a prison necessarily limited in the space that must be occupied by each convict.¹²⁷

Whereas late eighteenth-century penitentiary advocates opposed the idea of hard labour in public as a degrading spectacle that undermined the process of 'rehabitation',¹²⁸ early twentieth-century southerners adopted a very different view, partly because of the demographics of southern prison populations. Whereas antebellum southern penitentiaries were used to punish and discipline whites, most postbellum prisoners were black, and to most white southerners their public labour

was not particularly degrading or inhumane, while their need for reformation was deemed minimal. Yet the rhetoric of reformation increased over time. In 1907 Governor Broward noted:

More and more each year are we coming to realize that the purpose of penal laws and prisons is not revenge upon the criminal and his offense against society, but to reform him and make him a beneficial and producing element in the social system, rather than a charge upon it.¹²⁹

The significance attached to punishment and reformation was perhaps an attempt to place convict leasing in the tradition of the Jacksonian penitentiary and of Progressive penal reforms evident in northern and mid-western states. With the establishment of the State Prison Farm in 1914, the rhetoric of reformation increased, and Rothman notes that Progressives believed 'that prisons could fulfill both a custodial and a rehabilitative function. There was no intrinsic conflict between guarding men securely and making them better men, between incapacitation and reformation'.¹³⁰

The men who ran Florida's penal institutions in the early twentieth century clearly thought they were doing so in a bold and innovative way. Dr. Simeon H. Blitch, and Commissioners of Agriculture Benjamin E. McLin and William A. MacRae, all of whom regularly attended National Prison Association conventions, extolled a commitment to improving conditions in Florida's State Prison System, based on a mixture of professed humanitarianism and concern for the profit motive. It was widely recognised that female, together with disabled and diseased male prisoners constituted an unwelcome financial burden as these groups were neither 'self-sustaining nor remunerative [sic]'. In the early 1890s Commissioner Wombwell had recommended that male convicts under sixteen years of age and

all female convicts 'could be employed at a profit to the State in various menial positions at the Insane asylum', and that neither group should be imprisoned near able-bodied male convicts, the implication being that youthful male prisoners were too vulnerable and the presence of female prisoners was disruptive.¹³¹ The establishment of a Central Prison Hospital constituted one means of removing inefficient prisoners from the camps, and as with other modifications, was designed to maximise the profitability of able-bodied male convicts.¹³² In 1909 McLin declared: 'My idea had been, since the inception of the [hospital] plan, that it should be a basis for the State to support all the women, minors, indigent, or those not suited for regular heavy manual labor'.¹³³

Women account for a tiny percentage of all committals to Florida's State Prison System in this period (less than four percent), but were a constant source of irritation to camp superintendents, lessees and state convict inspectors, primarily because the system was not designed to cope with them. Blich complained to the American Prison Association in 1905 that female convicts were of the 'worst type of those removed from society', and usually at the most advanced stage of depravity, thus the difficulties of control and management associated with this class of prisoner hindered efforts to constantly improve standards for all state prisoners.¹³⁴ There were however virtually no rules governing the treatment or punishment of women and because of their small numbers they usually received inferior care. A female felon in Florida often lived and worked as the sole woman in a turpentine or mining camp, undertaking the cooking, cleaning and laundry for male convicts and guards, and acting as a domestic servant to the white camp manager. Curtain observes: 'To be a woman in a prison camp of men was often

a nightmare of hard work, bad treatment, and isolation',¹³⁵ which together with sexual exploitation could increase anxiety and humiliation.

As female convicts in Florida were not required to be separated from male prisoners until the early twentieth century, coerced and voluntary sexual liaisons with managers and other prisoners were frequent and pregnancy could result. The shortcomings of prison conditions for women is most dramatically illustrated in the treatment of pregnant female prisoners; discretion was often absent in the early years of the lease. A committee investigating convict camp conditions in 1887 reported finding one female prisoner who had been convicted of larceny, was 'enciente [sic]' at the time of conviction and sentence, and was likely to give birth in a matter of weeks: 'As her sentence was for twelve months, about fifteen days of which have expired, we doubt the propriety of recommending her pardon. We do believe that special care and suitable quarters ought to be assigned her at once, in order to relieve her of any suffering that would be otherwise inevitable under the circumstances'.¹³⁶ Fifteen years later, pregnant female prisoners could be eligible for temporary paroles issued by the pardon board, these often became indefinite or were converted to conditional pardons if the woman's case was considered deserving. By this time, prison authorities in Florida were beginning to recognise the need for greater discretion in addressing such issues.

The matter of female convicts and their unsuitability to the lease system was a constant source of concern to officials such as Blitch and McLin who recognised the need for differential treatment, yet securing funds from the Florida legislature to implement reform was difficult, partly as a consequence of the fiscal conservatism of Florida's legislators and governors and the Constitution of 1885

which 'forbade the state from operating with a deficit'.¹³⁷ In 1909 McLin sought to persuade the legislature of the need for improvements:

Another fact stands out most prominent and to our discredit, that we stand *solitary and alone* in the leasing of women - black and white - for a moneyed consideration. . . . To lease our women prisoners indiscriminately to average with all the others is wrong . . . Proper, humane treatment of the prison class demands it, the good name of the people of our State require it, good morals insist that it must be done.¹³⁸

For McLin, the leasing of female convicts undermined the moral authority of the state government and traditional southern notions of *noblesse oblige*. He argued that Florida should follow the example of Louisiana, Mississippi and Alabama by gradually withdrawing prisoners from the lease and employing them in self-sustaining farm work.¹³⁹ He called on the state legislature to purchase farm land on which to construct permanent buildings for prisoners that would 'constitute a nucleus for a penitentiary'. The 'penitentiary' subtly acquired a gendered identity as it was increasingly viewed by McLin and Blich as the appropriate mechanism for managing female convicts.

The view that women should be held separately and treated differently from male offenders had gained national and international acceptance throughout the nineteenth century. In the United States this gave rise to the distinct and highly innovative 'domestic reformatories', based on cottage plans, situated in rural surroundings, staffed by female personnel, and with regimes based on middle class notions of ideal feminine behaviour, toward which female inmates were encouraged to aspire. The majority of female reformers were heavily influenced by prevailing assumptions about gender and notions of 'appropriate' female behaviour: 'Through the reformatory movement, the criminal justice system

became a mechanism for punishing women who did not conform to bourgeois definitions of femininity'.¹⁴⁰ The reformatory movement was part of the female institution-building of social feminists and the social purity movement which demanded the 'segregation' of so-called 'immoral women' from 'decent society', and across the states women reformers, such as those of the Florida Federation of Women's Clubs (FFWC), spearheaded the movement to establish separate prisons and reformatories for women, and in some cases directed these institutions. The FFWC was foremost in the campaign to establish a State Prison Farm to facilitate the withdrawal of female prisoners from the lease, while the Jacksonville Club Women were prominent in the campaign to improve conditions at the Marianna State Reform School for juvenile offenders, as part of the wider child welfare movement that encompassed efforts to establish a juvenile court system and regulate child labour.¹⁴¹

As of the 1870s several Florida officials, including the Adjutant General, had urged the search for alternatives to convict leasing for the rising numbers of male offenders under eighteen years of age:

The prison where all ages, colors and grades of criminals are not only allowed free intercourse, but are compelled, when unemployed, to occupy the same room, is a hot-bed of vice and [a] school for criminals, and it seems akin to crime and a blunder in statesmanship to force the novice in crime, of tender and impressionable age, into such contaminating associations.¹⁴²

Governor Jennings's message to the state legislature in 1901 contains a recommendation that the State Reform School be opened as a state penitentiary for female, aged, infirm and all prisoners under age fifteen years.¹⁴³ A State Reform School at Marianna was established under a legislative act of 1897, and was supported by Jacksonville's African American community, but did not become

fully operational until 1909 following pressure from the Jacksonville Club Women.¹⁴⁴ While initially it took young persons aged between ten and sixteen years of both sexes, after 1913 the institution became exclusively male and emphasis was placed on providing industrial training for the 124 inmates. Cash described the State Reform School as 'one of the most beneficent pieces of legislation ever enacted in Florida' which 'has saved many a boy to society and from the commission of crimes, which in the past sent youthful offenders to the chain gang or the gallows'.¹⁴⁵

Dismantling the lease

Florida gradually moved to end convict leasing in the second decade of the twentieth century. The need for changes to Florida's penal arrangements had already been acknowledged by the Board of Commissioners of State Institutions. A Resolution of January 1909 recognised that the contract system had become unwieldy, and that it was increasingly impractical for the state to supervise prisoners labouring under up to thirty-five different contracts. It further noted that if one contractor failed in his duties, the state would have to resume control of the leased convicts and had nowhere to put them.¹⁴⁶ From 1910 female prisoners along with infirm male convicts, which together accounted for approximately twenty percent of the total prison population, were removed from the various state prison camps and placed at Marion Farms, a prison farm owned by the leasees, but this was recognised as a temporary measure. Sustained agitation resulted in the passage of a bill in 1911 abolishing the lease system, but it was vetoed by Governor Gilchrist. Gilchrist, who favoured reform, appears to have had two

reasons for his veto: Florida had no penitentiary so it was impractical to vote for abolition; and he abhorred the alternative of the chain-gang, likening the 'iron cages on wheels' or moving Panopticons in which road labourers were housed to 'cages in which animals are carried around in the menageries which often exhibit in our state'.¹⁴⁷

The State Convict Law of 1913 divided prisoners into two grades: Grade 1 consisted of all able-bodied male convicts to be leased to private contractors as of 1 January 1914, and Grade 2 convicts who were to be transferred to the State Prison Farm.¹⁴⁸ It was the cumulative result of internal state and external pressure for abolition and represented official acknowledgement that the lease, now thirty-three years old, could not go on indefinitely. The prison farm was located in 20,000 acres of land near Raiford in Bradford County purchased by the State of Florida after Governor Gilchrist first approved the idea in 1909, and reflected the agenda of Commissioner McLin and later MacRae. At the urging of Governor Trammell, the profits from the final four years of the state convict lease system were to pay for the construction and equipping of the State Prison Farm.¹⁴⁹

In 1915 state prisoners were divided into three classes; all able-bodied black male convicts, the only group still subject to the lease; white and black female convicts, hospitalised and infirm convicts, to be managed at the State Prison Farm; white male convicts of all ages and black male convicts who had served ten or more years, also to be managed at the prison farm.¹⁵⁰ In his 1915-1916 report, Commissioner MacRae observed:

There is no doubt that prisoners can be taken better care of in a central institution where under one management, subject to more direct supervision, there is a chance for classification, reformation, cooperation, economy and the placing of responsibility, than by

distributing them about in temporary quarters where mortality, sobriety, medical attention and sanitary advantages cannot be so good. Stories of the mistreatment of prisoners in turpentine and lumber camps are now historical incidents, and the wish is expressed that it may not be long before the leasing system in any form may be a thing of the past.¹⁵¹

Such observations were in direct contrast to earlier views on the desirability of open air prison labour and the benefits of widely dispersed small prison groups. Bradford Farms included overtones of the congregate system, but sleeping quarters still consisted of large dormitories with their own dining rooms. Its founders' organisational ethos reflected continued southern advocacy of open air labour as more humane and healthful than confinement within prison walls.

The resulting changes were in keeping with developments in several southern states which, by the turn of the century, were beginning to experiment with plantations, road camps, and industrial prisons to counter criticism of leasing, and to ward off the continued public opposition from taxpayers and legislators to state expenditure on penitentiaries. Distinctive regional variations in penal practice emerged: southwestern states such as Mississippi and Louisiana established state penal farms, border states preferred industrial prisons, and southeastern states such as Alabama and Georgia utilised convict road work.¹⁵² Florida combined two Progressive era alternatives to leasing: the state penal farm and the convict road labour force. Farm work was touted by political leaders, penal experts and prison reformers as a truly progressive approach, especially for black prisoners, where stress was placed on acquiring agricultural skills as a means of regeneration and that would lead to employment on release.¹⁵³ In defence of prison farm labour, Commissioner MacRae noted: 'If imprisonment is to be used as a means of good, prisoners must be made fit to live properly, equipped with industrial and useful

habits by which they may be able to support themselves when they return to society. Men will always be needed on the farm.'¹⁵⁴ This reflects a southern interpretation of the Progressive prison model where the prison routine was to be as close as possible to that of "normal" society, although the reality fell short of the ideal as the custodial programme continually undercut that of reform.¹⁵⁵ Further, prisoners who entered Florida's prison system with the ubiquitous label of 'laborer' were it seemed destined to remain agricultural labourers. This reflected the long-standing belief that African Americans were suited only to unskilled labour and the desire to inhibit black competition with white skilled workers or craftsmen. Emphasis was placed on the opportunities for reformation offered to the convict through prison farm labour. In his address to the 1921 American Prison Association, State Prison Farm Superintendent, J. S. Blich argued: 'The great majority who are sent to prison are misfits, and in order to return them to society useful and law-abiding citizens they must be rehabilitated', to be achieved through good discipline, the building of self-trust and a system of incentives for good behaviour.¹⁵⁶ Women offenders continued to experience inferior treatment at Raiford where they were never completely separated from male convicts and their prison labour continued to conform to stereotypes of appropriate feminine occupation according to race and class: white women sewed, while black female field crews worked on garden patches.¹⁵⁷

Across the South there was a growing public desire to see state convicts labouring on public projects rather than enriching individuals, hence the backlash against the 'robber barons' of the convict lease and support for the 'good roads movement' from farmers seeking better access to local markets, urban boosters and

working people, merchants, and civil engineers and other southern technocrats.¹⁵⁸ As this movement gathered momentum in the early twentieth century, several Florida politicians had begun to examine more closely the merits of this system, encouraged in part by Georgia's apparent success in switching to convict road labour in 1908. Governor Park Trammell was one advocate of convict road building in Florida and favoured gradual changes to the contract system 'so that the financial interests of the State should not suffer by the process', especially in the context of the economic downturn affecting Florida as a consequence of World War I.¹⁵⁹ A robust road programme was considered essential to attract tourism and further investment to the state, and required a large, efficient and mobile labour force. In 1915 the legislature at Trammell's request established the State Road Department to oversee the road building programmes in Florida counties. Following passage of the Federal Aid Road Act of 1916, which was to promote federal-state highway construction, the Florida State Road Department's powers were enlarged in 1917 to enable it to approve the construction and maintenance of a state-aided road system.¹⁶⁰ The same year the state legislature passed the Convict Lease Act which assigned 300 state convicts to the State Road Department; the State Convict Road Force was created in 1919 and placed all but seventy-five able-bodied male convicts (who remained at the prison farm) under the control of the State Road Department.¹⁶¹

As a result of these changes, not all state prisoners were to be located in one central location; in fact the majority, who laboured to improve Florida's road transport network, would continue to live in mobile road vans where 'mortality, sobriety, medical attention and sanitary advantages' were not assured, and

mistreatment of state prisoners would remain a serious problem throughout the twentieth century. Because the majority of prisoners were African American, they 'continued to receive the worst treatment, laboring in malaria-infested swamps to build a highway system that would open up the state for land development and tourism'. As Governor Doyle Carlton (1929-1933) forbade the use of white prisoners in such conditions: 'In a real sense, therefore, the economic vitality of Florida was made possible by imprisoned blacks who provided the muscle for the state's development', without placing additional financial burdens on taxpayers or local resources.¹⁶² Further, after the end of the private leasing system, the 'state itself took over the task of exploiting convict labor for economic development' in its quest for a modern transportation infrastructure.¹⁶³

Even though the lease for state convicts was dismantled in 1918/1919, most individual Florida counties continued to lease their convicts until 1923 when the *New York Journal* published a series of articles recounting the death of Martin Tabert, a white male convict originally from South Dakota, at the hands of Putnam Lumber Company camp guard Walter Higginbotham.¹⁶⁴ The public outrage over this incident helped end the practice of convict leasing in Florida counties and the state as a whole, but by now alternatives were in place, and there were strong political and economic incentives to end leasing.¹⁶⁵ In the language of Foucault, the convict lease in Florida by the early twentieth century was increasingly viewed as 'a bad economy of power'. A rearrangement of the power to punish was required and "'humanity" is the respectable name given to this economy'.¹⁶⁶

Reinventing the penitentiary

The notion of the prison as 'community' that Rothman describes in detail in *Conscience and Convenience*¹⁶⁷ was evident in Florida only in the State Prison Farm at Raiford. This was the triumph of Progressive penal policy in Florida, perceived by members of the American Prison Association and other commentators in the 1920s as an innovative and remarkable example of a penal institution, not least because of the absence of armed guards (trusties were in charge of all work crews on the farm). As a result, the prison farm was extolled as an example of humane treatment, effecting restraint and rehabilitation through agricultural labour, complete with rewards for 'good and faithful service', and segregation of inmates from 'the so-called worldly pleasures'.¹⁶⁸ Abolition of convict leasing was a more straightforward and acceptable proposition by the end of the second decade of the twentieth century, while the establishment and growing profitability of the State Prison Farm and the increasing use of prison labour on public roads made the change easier to countenance.¹⁶⁹ Further, by the early 1920s additional alternatives to leasing had emerged: the Industrial School for Boys at Marianna, the Industrial School for Girls at Ocala, and the Florida Farm Colony for Epileptic and Feeble-Minded Persons.¹⁷⁰

Mancini finds it difficult to reconcile the racism, brutality and violence of the early twentieth-century South with charitable incentives for abolishing leasing. He rightly questions the humanitarian motives behind abolition campaigns, and notes that 'the evils of convict leasing were pointed out in *every* state within two years of its inauguration, while newspaper disclosures and legislative investigations revealed horrible prison conditions for over forty years'.¹⁷¹ Over the decades

sporadic protests were provoked by legislative investigations and newspapers exposés, while criticism came from ministers, physicians, boards of health, former custodial personnel, and reform-minded individuals.¹⁷² Colburn and Scher argue that Floridians have consistently evinced little interest in prisons and their convict populations other than to express their support for punishment rather than rehabilitation, and this explains in large part why governors allowed the convict lease to continue long after its abuses and exploitation were acknowledged. 'As long as criminals are kept safely behind bars and prevented from rioting, the governors [of twentieth-century Florida] have tended to ignore prisons and leave their administration to the superintendent of prisoners and the directors of the respective state institutions. Only when controversy has surrounded some specific penal matters have the governors intervened'.¹⁷³

Criticism of leasing in Florida peaked after 1908 amid public exposés and newspaper campaigns and the growing influence of the Florida Good Roads Association which joined the Florida Humane Society campaign for abolition.¹⁷⁴ There were increasing calls from taxpayers to use convicts on road-building and maintenance projects, while legislators were increasingly willing to use the power of the state in more active ways than their predecessors. Early twentieth-century exposés of leasing and peonage were designed to provoke public indignation and denunciation, and placed humanitarianism at the top of the agenda, (hence concern with camp conditions, nature and frequency of punishments, tyranny of camp personnel and lack of responsibility on the part of state authorities), but a distinct racial bias is also evident in many of these accounts. In 1907 journalist Richard Berry charged: 'The monumental error made by the employers of Florida was in

going beyond the black man with their slavery. Had they stuck to the racial division they might have escaped castigation, as they have for a decade. But, insatiate, and not finding enough blacks to satisfy their ambitious wants, they reached out and took in white men'.¹⁷⁵

Just as early nineteenth-century commentators found common denominators between penal and chattel slavery, turn-of-the-century critics of convict leasing emphasised its relationship to slavery; the control of the black labour force as a primary motivation; the similarities between convict life and slave life; and the shared nomenclature and customs.¹⁷⁶ Ayers characterises leasing as part of 'a continuum that ran from the monopolistic company store, to the coercions of sharecropping, to peonage, to the complete subjugation of convict labor'.¹⁷⁷ Mancini argues that convict leasing 'was partially a response to the demise of slavery'(and forms of labour reminiscent of slavery continued in convict leasing, including the fusion of the gang and task systems), but not a 'fundamental replacement for slavery'. Nevertheless, '[f]or those who were caught up in the web of labor agents, corrupt sheriffs, and businessmen desperate with the fear of a labor shortage, the convict lease was "worse" than slavery'.¹⁷⁸ A fundamental difference between slavery and convict leasing was that lessees and sub-lessees made only a minimal capital investment in any individual convict labourer. Lessees were concerned with acquiring productive labourers rather than a self-sustaining slave community, and so did not view the individual convict as a 'significant investment', but rather as an entity that could be easily and cheaply replaced.¹⁷⁹ A further difference lay in the prospect that convicts (in theory) were not destined for perpetual captivity. Mancini also criticises many scholarly

accounts of convict leasing for leaving the impression that at some point white southerners 'inexplicably developed humanitarian sentiments' that precipitated the end of leasing. Yet, as Ignatieff and Hirsch recognise, reformers were imbued with humanitarian intentions, they were genuinely repulsed by the chains, squalor, neglect, and arbitrary punishment characteristic of penal regimes, 'especially because these compromised the moral legitimacy of the social system in the eyes of the confined' and made it impossible for the public to accept the benevolent intentions of the institutions.¹⁸⁰

The penitentiary with its accent on solitude, penitence and isolation marked a significant departure in the philosophy of punishment, and was recognised as such by Florida's Reconstruction governor. In one sense, Florida did 'invent' a penitentiary as a necessary expedient to the penal problems of the post-Civil War years. However, by the late 1860s the meaning and form of the penitentiary had changed markedly from the ideal of promoting individual reformation to the realities of custodialism and hard labour. In the late nineteenth century an industrial programme was established in the penitentiaries of Pennsylvania, New York and Massachusetts that embodied a 'new standard of convicts working to learn trades but avoiding the public markets'.¹⁸¹ The public account system, where prison labour was used only to produce goods other state agencies could use, followed successful campaigns by organised labour that denounced unfair competition from convict labour.¹⁸² Northern penitentiaries were usually neither financially self-sustaining nor profitable. Florida penal legislation of the 1870s offered a vision of the penitentiary rooted in the early nineteenth century that was at odds with the financial precariousness of the immediate postwar years and

exhibited the bewilderment over the state's responsibility toward the former slaves. Therefore the 'penitentiary' of the postwar South had to reinvent itself. In the 1880s and 1890s the 'penitentiary' in Florida meant a style of operation conducted on private turpentine farms and phosphate mines. Even in the second decade of the twentieth century, the Florida 'penitentiary' consisted of a collection of stockades and isolated camps, with large wooden cells accommodating twenty to thirty prisoners, set in the piney woods.

Unlike the original Auburn and Pennsylvania penitentiaries, Florida legislators evinced limited concern over architectural arrangements or welfare provision; hard labour was considered the only proper social response to criminal behaviour. Alternatives to the lease were rarely discussed until it was thirty years old and for most of the period of its existence reform did not mean abolition, but ensuring the lease's continued efficiency and rationality. Whereas the purpose of the Auburn and Pennsylvania systems was the establishment of a disciplined routine to distance prisoners from deviant influences and effect rehabilitation, this path to reformation could never be achieved in Florida because convicts were leased out by successive administrations to private contractors unconcerned with the moral welfare of their charges. The central objective of the lease system was to exploit the labour of men in their most economically productive years rather than on reformation. The convict lease is perhaps closer to the Philadelphia model of the Walnut Street Prison of 1790, where prisoners were constantly employed and supervised, where solitary confinement was used for the most serious offenders and incorrigibles, and where the length of stay could vary according to the behaviour of the prisoner.¹⁸³ The combination of the routine of the prison

and the workhouse was evident and may provide the essential link between different styles of penal operation in northern penitentiaries and southern leases, thus challenging the extent to which the lease system was anomalous in relation to penal arrangements in expanding northern industrial capitalist society. Yet, Mancini's argument that blacks' 'outsider' status helps explain the 'penological anomaly of convict leasing' has to be taken into account.¹⁸⁴

The convict lease system was conceived as a penitentiary without walls or solitary cells, a place not of penitence and reformation, but a means of inculcating habits of industrial discipline and of maximising the profits of both southern capitalists and state governments and as such was a 'new technology of power' that provided 'knowledge' of convict labourers. Post-Civil War southern legislators responded to the challenges and perceived the dangers of emancipation through the mechanism of the convict lease system, which they called the 'penitentiary'. Floridians were unwilling to expend resources on the maintenance of a prison or its inmates so long as the convict lease system provided enough revenue to offset prison costs and supply the state with a comfortable margin of profit. Convict road construction was an 'exemplary Progressive reform' that was designed to quell humanitarian outrage and to act 'as a corrective to the declining economic rationality of convict leasing'.¹⁸⁵ Florida governors did not see any incompatibility between requiring convicts to perform hard labour and ensuring taxpayers were not burdened with the costs of a prison:

Our criminal laws are made for the safety of our people and property, and the administration of our convict system should look to the moral welfare and reformation as well as the safekeeping of the convicts, utilizing the labor of convicts, making the same profitable is also perfectly proper, so long as their safe keeping, health and moral welfare is looked after.¹⁸⁶

In 1912 MacRae boasted:

The State of Florida is in better condition to build a modern prison farm or penitentiary than any State in the United States. Florida is the only State whose convicts are handled with such profit that from their own labor they supply all the funds needed to build a great institution.¹⁸⁷

The absence of a penitentiary tradition, the potential profitability of the makeshift system of leasing in Florida before 1879, and the full realisation of its profitability by the early twentieth century, together with the administrative convenience of the convict lease, helps to explain why Florida, the last of the former Confederate states to adopt fully this system, was also one of the last to give it up in 1923.

1. RCA, 1901-1902, p. 48.
2. RCA, 1903-1904, p. 309.
3. John B. Thomas [State Prison Supervisor] to Hon. B. E. McLin, 1 January 1913, RCA, 1911-1912, p. 31.
4. Grantham, p. 127.
5. Alex Lichtenstein, "'Through the Rugged Gates of the Penitentiary': Convict Labor and Southern Coal, 1870-1900," in Melvyn Stokes and Rick Halpern, eds., *Race and Class in the American South Since 1900*, (Oxford: Berg Publishers, 1994), p. 5.
6. Ibid., p. 6.
7. Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865*, (New York: Oxford University Press, 1989), pp. 3, 79; Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South*, (New York and Oxford: Oxford University Press, 1984), p. 34.
8. Ayers, *Vengeance and Justice*, pp. 34-35, 38.
9. Ibid., pp. 41-45.
10. There was no state prison or penitentiary in antebellum Florida. Gannon, p. 40.

11. David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, (Boston: Little, Brown and Company, 1971), pp. 273, 283. Rothman charts the failure of the reformers' utopian goals and the descent of penitentiary regimes into custodialism in the second half of the nineteenth century. By the 1850s these institutions had become dumping grounds for lower-class and foreign-born 'undesirables'.
12. Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928*, (Columbia, S.C.: University of South Carolina Press, 1996), p. 144. This theme echoes those of earlier exposés of Florida's penal system, including E. C. B. "White Slavery in Florida," *New York Evening Post*, 12 February 1898 and Richard Berry, "Slavery in the South To-Day," *Cosmopolitan Magazine* 42 (March 1907): 481-491.
13. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Translated by Alan Sheridan, (New York: Vintage Books, 1979), pp. 7, 264.
14. Masur, pp. 5-7, and Chapter 5 "The Origins of Private Executions in America," pp. 93-116.
15. Ibid., pp. 5-6, 94, 157-158. The Pennsylvania legislature abolished public hangings in 1834, New York, New Jersey and Massachusetts followed in 1835. The anti-gallows movement pushing for universal abolition peaked in the 1840s.
16. See Florida, *Acts and Resolutions 1832*, p. 113; *Governor's Message, Journal of the Legislative Council, 1832*, p. 10; Kathleen Falconer Pratt, "The Development of the Florida Prison System," M.S. thesis, Florida State University, 1949, p. 2.
17. For discussion of punishment in pre-Civil War Florida see James M. Denham, "'A Rogue's Paradise': Violent Crime in Antebellum Florida," Ph.D. diss., Florida State University, 1988.
18. Driggs, p. 1174.
19. Foucault, p. 14.
20. See Joel Williamson, *The Crucible of Race: Black-White Relations in the American South Since Emancipation*, (New York and Oxford: Oxford University Press, 1984), pp. 308-310; W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930*, (Urbana, I.L.: University of Illinois Press, 1993), pp. 42-43; Nancy Maclean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan*, (New York and Oxford: Oxford University Press, 1994), especially Chapter 7, "Paramilitary Paternalism: The Politics of Terror"; Paul A. Gilje, *Rioting in America*, (Bloomington and Indianapolis, I.N.: Indiana University Press, 1996), pp. 107-108.
21. Foucault, pp. 33-35.

22. Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Woman's Campaign Against Lynching*, (New York: Columbia University Press, 1979), p. 139. Between 1889 and 1918, 178 persons were lynched in Florida (16 white and 161 black); there were 223 legal hangings between 1869 and 1924. See Hall, pp. 134-135; National Association for the Advancement of Colored People, *Thirty Years of Lynching in the United States, 1889-1918*, (New York: Arno Press, and the *New York Times*, 1969), pp. 53-56.

23. William J. Bowers, *Legal Homicide*, (Boston: Northeastern University Press, 1974), p. 10-12, 54-55, 57. Bowers notes a marked trend toward centralisation of state-imposed executions in the period after the Civil War as state authorities began to require all executions within their jurisdictions to be performed under state rather than local authority, and at a single state facility instead of in local jurisdictions. Locally-imposed executions represented 87.2 percent of the total in the 1890s, and state-imposed executions constituted 88.7 percent of the total by the 1920s. It is perhaps worth pointing out that between 1897 and 1917 ten U.S. states abolished the death penalty, but eight of them had reinstated capital punishment by 1930. Galliher, Ray and Cook argue that 'lynchings emerged as the most common triggering event in reinstatement of the death penalty', in conjunction with the context of postwar economic depression and the presence of large minority populations. See John Galliher, Gregory Ray and Brent Cook, "Abolition and Reinstatement of Capital Punishment During the Progressive Era and Early 20th Century," *Journal of Criminal Law and Criminology* 83 (Fall 1992): 574-575.

24. James R. McGovern, *Anatomy of a Lynching: The Killing of Claude Neal*, (Baton Rouge, L.A.: Louisiana State University Press, 1982), p. 12; Colburn and Scher, p. 13.

25. For an early example see Harry Elmer Barnes, "The Historical Origins of the Prison System in America," *Journal of the American Institute of Criminal Law and Criminology* 12 (1921-1922): 37-38.

26. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure*, (New York: Russell & Russell, 1968), pp. 5-7.

27. Michael Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment," in Michael Tonry and Norval Morris, eds., *Crime and Justice: An Annual Review of Research*, vol. 5. (Chicago: University of Chicago Press, 1983), p. 156.

28. Rothman, pp. xiii, 82, 105. Many valid criticisms have been levelled at Rothman over the years, for example, his inability to explain why the Jacksonians were so anxious about change and disorder, the relationship between Jacksonian democracy and the 'total institution', and his failure to recognise the class and gender interests of Jacksonian reformers.

29. David J. Rothman, "Social Control: The Uses and Abuses of the Concept in History of Incarceration," in Stanley Cohen and Andrew Scull, eds., *Social Control and the State: Historical And Comparative Essays*, (Oxford: Basil Blackwell, Ltd., 1985), pp. 106-117.
30. Hirsch, pp. 14, 23-25, 56, 113-116, 167. Hirsch suggests, as does Harry Barnes, that the American Revolution may have delayed prison reform in New York and Pennsylvania for a decade until the 1790s. See Barnes, p. 48.
31. See endnote 12.
32. Florida Constitution of 1868, Article X, Section 2.
33. "Governor's Message," *A Journal of the Proceedings of the Assembly of the State of Florida at its First Session, Tallahassee, 1868*, (Tallahassee: Office of the Tallahassee Sentinel, 1868), p. 68. The Governor noted that the 1867 Comptroller's Report identified criminal prosecutions and payment of jurors and witnesses as 'two of the principal sources of expenditure on the part of the government' amounting to \$58,408.59 in that year. As Comptroller in the Fleming cabinet, William D. Bloxham blamed Florida's precarious financial position partly on the weighty costs of criminal prosecutions. He proposed that the costs for prosecuting insolvent or acquitted defendants should be borne by individual counties instead of the state. This became a constitutional amendment, ratified by popular election in 1893, after which time, County Commissioners were empowered to establish a fund, into which the income from fines and forfeitures were paid, and from which the costs of criminal prosecutions would be met, thereby reducing state taxes. See The Florida Historical Society, *Makers of America*, Florida edition, vol. 4. (Atlanta, G.A.: A. B. Caldwell, 1911), pp. 120-121; "Bloxham Memorial Services," *Appendix to the Journal of the Florida State Senate*, Tallahassee Historical Society Annual, 1953, vol. II, p. 36.
34. "Governor's Message," 1868, pp. 68-70.
35. The arsenal, built in 1834, was donated together with the extensive lands surrounding the structure, to Florida by the United States' government in 1868. Rowland H. Rerick, *Memoirs of Florida*, vol. I. (Atlanta, G.A.: The Southern Historical Association, 1902), p. 320-321; Jerrell H. Shofner, *Nor Is It Over Yet: Florida in the Era of Reconstruction, 1863-1877*, (Gainesville: The University Presses of Florida, 1974), p. 217; Jeffrey A. Drobney, "Where Palm And Pine are Blowing: Convict Labor in the North Florida Turpentine Industry, 1877-1923," *Florida Historical Quarterly* 72 (April 1994): 415. The new state prison could accommodate up to 300 inmates. Mildred Fryman suggests that after Emancipation, Florida authorities 'badly overestimated the volume of offenses which would be committed by freedmen and thus anticipated having to administer punishment to a large number of criminals', hence the recommendation that a committee be set up to investigate the establishment of a state prison system in 1865. See Mildred L. Fryman, "Career of a 'Carpetbagger': Malachi Martin in Florida," *Florida Historical Quarterly* 56 (January 1978): 323; Florida House

Journal, 1905, p. 54; Shofner, *Nor Is It Over Yet*, pp. 53-56.

36. Ayers, *Vengeance and Justice*, pp. 52-54.

37. McDaniel, p. 3. The commanding officer, who kept all records and submitted monthly reports to the Adjutant-General, held the rank of colonel and the surgeon that of captain.

38. Florida. *Reports of the Adjutant General*, 1873, p. 15, Florida State Library, Tallahassee, Florida, hereafter cited as RAG. In this early period prisoners were not segregated according to race or gender. Provision for the prisoners' moral well-being was minimal as there was no chaplain and no library. There are frequent calls from the Adjutant General for a few thousand dollars to construct cells to assist in the maintenance of discipline, to prevent escapes, and hinder the spread of disease, indicating there were serious teething problems with the prison. Individual cells were never constructed at Chattahoochee state prison. See RAG, 1874, p. 12.

39. Fryman, p. 326.

40. Ch. 1635, Acts of 1868. The Adjutant General also supervised the State Insane Asylum from 1877 to 1888.

41. David Lang to Mary Lang, 5 February 1888, Florida, Manuscript Collections, *Lang, David (1838-1917) Letterpress Books, 1886-1889; 1893-1909*. 2 vols. MS84-028. Series 624. Florida State Archives, Tallahassee, Florida, hereafter cited as Lang Collection.

42. RCA, 1913-1914, pp. 5-7; Tebeau, p. 292.

43. Rothman, *Discovery*, p. 90.

44. RAG, 1873, p. 17.

45. William T. Cash, *The Story of Florida*, vol. II. (New York: The American Historical Society, Inc., 1938), p. 494; J. C. Powell, *The American Siberia or Fourteen Years Experience in a Southern Convict Camp* (Montclair, N.J.: Patterson Smith Publishing Company, 1971), pp. 8-10.

46. Cash II, p. 495.

47. Fryman, pp. 323, 327.

48. Powell, pp. 8-10; Cash II, pp. 494-495; Mancini, p. 185; Fryman, p. 317.

49. Fryman, pp. 324, 327.

50. Ibid., pp. 326, 328, 331. Martin established a modestly profitable wine business in Gadsden County. He was elected to the Florida Assembly as one of the representatives for Gadsden County in 1872, 1874 and 1876, and as speaker

of the assembly in 1874.

51. Ibid., p. 338.

52. Ibid., p. 334. The 1868 constitution was regarded as a 'carpetbagger' document imposed on Florida by outsiders supported by a black electorate and a foreign military force. See Jerrell H. Shofner, "Custom, Law, and History: The Enduring Influence of Florida's 'Black Code,'" *Florida Historical Quarterly* 55 (Fall 1977): 278.

53. Shofner, *Nor Is It Over Yet*, p. 217; Gene Burnett, "Florida's Penal System Was Once Unrivalled for Brutality," *Florida Trend* 22 (July 1979): 135; Ayers, *Vengeance and Justice*, p. 62.

54. Mancini, p. 185; RAG, 1874, p. 14; Rerick II, p. 320; Joe M. Richardson, *The Negro in the Reconstruction of Florida, 1865-1877*, (Tallahassee, F.L.: The Florida State University, 1965), p. 66.

55. Karnes, p. 4; Governor Bloxham's address in 1897 noted that the between 1869 and 1877 the state prison incurred costs of \$234,000 for 82 prisoners. By contrast, the estimated cost of maintaining a convict population of 650 in 1897 was put at \$250,000 without including the cost of buildings. See Rerick I, p. 393.

56. RCA, 1911-1912, p. 48; Rerick I, p. 345. Conservative Democrats regained political control of the state in 1876 and businessman George F. Drew became governor in January 1877. Facing severe financial problems the Drew administration focused on the \$40,000 annual cost of maintaining the state prison. The state prison at Chattahoochee was accordingly abolished and the building became a depository for the state's insane persons who had previously been farmed out to Columbia, South Carolina.

57. Carper, p. 7.

58. Edward C. Williamson, *Florida Politics in the Gilded Age, 1877-1893*, (Gainesville, F.L.: The University Presses of Florida, 1976), p. 51.

59. Ayers, *Vengeance and Justice*, p. 196 notes that the profitability of convict leasing was real and sustained in comparison with manufacturing operations in northern prisons. He cites the Second Annual Report of the Commissioner of Labor, 1886, Convict Labor (Washington, 1887), pp. 266-267, 380-381: By 1870s and 1880s, 'nationally, all prisons which did not use the lease system earned only 32 percent of their total expenses, while those who did take advantage of the demand for convict labor outside the prison walls earned 267 percent'.

In 1901/1902 Governor William S. Jennings admitted that Florida received \$26.40 for each convict whose labour was actually worth at least \$130. He promised to run the lease in a more efficient manner and to increase state revenue by breaking up the 'pool' of contractors who combined bids and speculated in convicts, and derived huge profits from subleasing. Jennings secured \$151.50 per convict per annum, while his successor Governor Napoleon B. Broward secured

\$207.50 per convict per annum in 1906, thus Florida had a million dollar lease by the middle of the first decade of twentieth century. See Carper, p. 186; Rerick I, p. 410.

60. Lichtenstein, *Twice the Work of Free Labor*, p. 37.

61. See Mancini, p. 221; Lichtenstein, "Rugged Gates," p. 10; Karnes, p. 42.

62. Ayers, *Vengeance and Justice*, p. 222: 'From every perspective, even that of prominent Southern whites, the convict camps were incontrovertible evidence of the New South's moral failure'. He reiterates C. Vann Woodward's view that the convict lease system undermined the moral authority of the Redeemers and tradition of paternalism claimed by white southerners in the handling of race issues. See C. Vann Woodward, *Origins of the New South, 1877-1913*, (Baton Rouge, L.A.: Louisiana State University Press, 1971), pp. 214-216.

63. Lichtenstein, "Rugged Gates," pp. 4, 10, 17-18.

64. RCA, 1889-1890, p. 139.

65. Ibid., p. 140; RCA, 1891-1892, p. 119; RCA, 1893-1894, p. 61.

66. RCA, 1893-1894, p. 67.

67. Drobney, p. 434; Lichtenstein, *Twice the Work of Free Labor*, p. 107. Lichtenstein notes that convict labour may also have ensured the long-term stagnation of heavy industry in the Lower South in the early twentieth century by inhibiting incentives for contractors to invest in technological developments.

68. RCA, 1891-1892, p. 119.

69. For example, House Journal, 1905, p. 34 states that seventy-five percent of complaints concerned county convict camps.

70. RCA, 1893-1894, pp. 67-68.

71. RCA, 1895-1896, p. 53.

72. Ibid., pp. 78-79.

73. E. G. B., "White Slavery in Florida," *New York Evening Post*, 12 February 1898.

74. House Journal, 1901, p. 69.

75. *Tampa Morning Tribune* 16 August 1906, p. 8, hereafter cited as TMT.

76. Office of the Governor, Correspondence of the Governors, 1909-1918, Record Group 101, Series 613 (Park Trammell), Box 4/ Folder 5: State Appointments and Recommendations - Inspector of Convicts, 1912-Jan 30, 1913.

77. Guil M. Howsley to Hon. Park Trammell, 22 June 1916, Application Case Files, Box 137/ File 2240. Florida. State Pardon Board, *Application Case Files, 1887-* Record Group 690. Series 443. Florida State Archives, Tallahassee, Florida, hereafter cited as ACF.

78. B. E. McLin to Florida Naval Stores & Comm. Co., 5 April 1902, Box 6/ Folder 7, Florida, Board of Commissioners of State Institutions, *Convict Lease Program, Subject Files, 1889-1916*. Record Group 890. Series 42. Florida State Archives, Tallahassee, Florida, hereafter cited as CLP.

79. S. H. Blitch to Hon. B. E. McLin, 31 December 1903, pp. 1,3,5.

80. J. D. Ferrell to Hon. W. A. McRae, 30 June 1913, CLP Box 6/ Folder 1: Reports -Supervisors of State Convicts to Commissioners of Agriculture, 1899-July 1913.

81. S. H. Blitch to Hon. B. E. McLin, 1 January 1904.

82. RCA, 1911-1912, pp. 17, 30.

83. RCA, 1905-1906, pp. 338-339.

84. Among the convicts ordered to the Central Hospital in 1913 were two white male opium addicts, Harry L. Foster and Jackson H. Conway. See R. A. Willis to Hon. W. A. McRae, 24 June 1913.

85. B. E. McLin to Florida Naval Stores & Commission Company, 5 April 1902, in CLP Box 6/ Folder 7, pp. 5-6. The Hillman camp at Floral City was singled out as an example of good practice: 'This is a good camp. You notice that there are mounted men, plenty of dogs, good discipline with the captain and guards, and as is always the case, where there is discipline among those handling the prisoners, the prisoners are in fine shape and doing good work'. In contrast, Daniel Bros camp was singled out as an example of unsatisfactory conduct. It lacked cleanliness while frequent escapes were attributed to the absence of a mounted man to watch over prisoners as they laboured in the woods, and an incompetent set of guards and captain: 'There must be positive and prompt change of method and general care of prisoners at this camp or the prisoners must be removed'. At a camp run by McNeil & Co. it was ordered that 'the captain must learn to control his temper in handling prisoners and especially in punishments'.

86. RCA, 1903-1904, p. 303.

87. RCA, 1915-1916, pp. 18, 41. A camp of fifty convicts usually had a captain, commissary man/ bookkeeper and engineer, each paid \$25-50 per month, and four day guards and a night guard, each paid \$18-20 per month.

88. N. A. Blitch to Hon. B. E. McLin, 28 July 1905, CLP Box 6/ Folder 1: Reports - Supervisors of State Convicts to Commissioners of Agriculture, 1899-July 1913.

89. Lichtenstein, *Twice the Work of Free Labor*, p. 130.
90. Drobney, p. 430; CLP Box 2/ Folder 1: Prisoner Punishment Records.
91. Cash II, p. 494.
92. J. D. Ferrell to Hon. W. A. MacRae, 17 May 1913.
93. Roger Chartier, "The Chimera of the Origin: Archaeology, Cultural History, and the French Revolution," in Jan Goldstein. ed., *Foucault and the Writing of History*, (Oxford: Basil Blackwell Ltd., 1994), p. 179.
94. Berry, p. 486.
95. Ayers, *Vengeance and Justice*, p. 202.
96. Foucault, pp. 170-171.
97. McDaniel, p. 15. These uniforms were supposedly abolished under 1919 legislation, but prisoners on the state prison farm in the 1920s wore striped trousers.
98. Lauriault, p. 317; Carper, pp. 98-99. After one of Bailey's trustees assaulted a female child while on furlough, a series of investigations of these camps followed. The trusty system was widely criticised and the Board of Commissioners of State Institutions had toyed with abolishing it in 1893 (Wombwell and Lang had recommended this largely because of hostile public opinion). They were persuaded to retain it partly because of the issue of consequential damages and extra costs incurred by such action. See Minutes of the Board of Commissioners of State Institutions meeting, 25 October 1893, OC 1 (1888-1917): 500. Use of trustees continued into the twentieth century as letters to the governor and pardon board, and descriptions of the state prison farm demonstrate.
99. Ayers, *Vengeance and Justice*, p. 202.
100. R. A. Willis to McNeil Bros, 12 March 1913, CLP Box 5/ Folder 1.
101. Letters from forty black convicts (17 signed with an X) and ten white signatories to His Excellency Governor Jennings, 20 May 1901, CLP Box 5/ Folder 1.
102. Mary Ellen Curtain, "The 'Human World' of Black Women in Alabama Prisons, 1870-1900," in Virginia Bernhard, ed., *Hidden Histories of Women in the New South*, (Columbia, M.O. and London: University of Missouri Press, 1994), p. 19.
103. Karnes, pp. 74-75.
104. Dr. G. W. Lamar to Hon. N. B. Broward, 16 June 1906, CLP Box 5: Reports - Prison Physician to Commissioner of Agriculture, 1903-1914.

105. RCA, 1901-1902, p. 70.

106. Ibid.

107. Ibid., pp. 59-60.

108. RCA, 1915-1916, p. 30.

109. Mancini, pp. 48-49; Grantham, p. 140.

110. House Journal 1911, pp. 108-109. A tally was kept by the camp superintendents and reported to the Commissioner of Agriculture who adjusted sentences accordingly 'unless some extraordinary bad conduct on the part of the prisoner is subsequently reported, which would forfeit the gain time already made'. D. Lang to G. P. Livingston, 25 November 1895, OC 2 (1894-1897): 275; *Revised Statutes of Florida* (1892), Chap. 3, Sec. 3039.

111. Lichtenstein, "Rugged Gates," p. 31; Mancini, pp. 54-55, 57-58, 109. Mancini argues that productivity levels of convict labourers were two-thirds to three-quarters that of free labourers and price-levels for convict labourers were artificially high because there were two in-built layers of profit (the state and the lessee), yet lessees were willing to pay as much for convict labourers as they did for free labourers because of the reliability factor.

112. John A. Mayer, "Notes Towards a Working Definition of Social Control in Historical Analysis," in Cohen and Scull, eds., p. 27.

113. For example, Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800-1935*, (Boston: Northeastern University Press, 1985). See also Estelle B. Freedman, *Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930*, (Ann Arbor, M.I.: The University of Michigan Press, 1984); Eric W. Rise, *The Martinsville Seven: Race, Rape, and Capital Punishment*, (Charlottesville, V.A.: University Press of Virginia, 1993).

114. U.S. Bureau of Census, *Thirteenth Census of the United States, 1910*, vol. II (Washington: Government Printing Office, 1913), p. 315; Grantham, p. 60. Florida's black population stood at 42.5 percent in 1890; 43.7 percent in 1900; and 41 percent in 1910.

115. Lucia Zedner, *Women, Crime and Custody in Victorian England*, (Oxford: Clarendon Press, 1991), p. 20.

116. Daniel Pick, *Faces of Degeneration: A European Disorder, 1848-1918*, (New York: Cambridge University Press, 1989), pp. 21, 182.

117. Ayers, *Vengeance and Justice*, p. 219.

118. Drobney, p. 430.

119. House Journal, 1897, pp. 31-32.

120. RCA, 1915-1916, p. 13.

121. Colburn and Scher, pp. 219-222, 236.

122. C. Vann Woodward, *The Strange Career of Jim Crow*, (3rd. rev. edn. New York and Oxford: Oxford University Press, 1974), pp. 23, 50, 97.

123. RCA, 1901-1902, p. 48; Shofner, "Black Code," pp. 289-291.

124 Colburn and Scher, p. 261.

125. In 1899 Wombwell approved appointment of Reverend M. Syfrett as chaplain to the convict camps managed by Myers Turpentine Company at Bayhead in Washington County. However, 'two of the convict camps recommended some very reputable colored men, which I did not approve of'. L. B. Wombwell to Hon. Board of Commissioners of State Institutions, 12 December 1899, CLP Box 7/ Folder 3: Recommendations for Appointment of Convict Camp Chaplain, 1899-1904.

126. RCA, 1903-1904, p. 337.

127. House Journal, 1901, p. 69.

128. Hirsch, pp. 46, 85.

129. House Journal, 1907, pp. 38-39.

130. David J. Rothman, "For the Good of All: The Progressive Tradition in Prison Reform," in James A. Inciardi and Charles E. Faupel, eds., *History and Crime: Implications for Criminal Justice Policy*, (Beverly Hills, C.A. and London: Sage Publications, 1980), pp. 272-273.

131. RCA, 1891-1892, p. 120.

132. RCA, 1903-1904, p. 319.

133. Ibid., p. 316.

134. RCA, 1905-1906, p. 297.

135. Curtain, p. 21; Anne M. Butler, "Still in Chains: Black Women in Western Prisons, 1865-1910," *Western Historical Quarterly* 20 (February 1989): 28-29.

136 "The Convict Camps: Report of the Committee on Their Present General Condition," *Florida Times Union* 26 May 1887, p. 5, hereafter cited as FTU.

137. Colburn and Scher, pp. 187-188.

138. RCA, 1907-1908, pp. 380-382.

139. RCA, 1909-1910, pp. 533-535.

140. See Nicole Hahn Rafter, *Partial Justice: Women in State Prisons, 1800-1935*, (Boston: Northeastern University Press, 1985), pp. xxvi, 15, and Nicole Hahn Rafter, "Chastizing the Unchaste: Social Control Functions of a Women's Reformatory, 1894-1931" in Cohen and Scull, eds., pp. 288-311.

141. Linda D. Vance, *May Mann Jennings: Florida's Genteel Activist*, (Gainesville, F.L.: University Presses of Florida, 1985), pp. 65-68; Ric A. Kabat, "Albert W. Gilchrist: Florida's Progressive Governor," M.A. thesis, Florida State University, 1987, p. 129. No separate prison for women was established until the Florida Correctional Institution for Women at Lowell was opened in 1956. Amid concern for juvenile delinquents and on the basis that women were specially suited to social work of this type, the Women's Clubs of Tampa and the Tampa Women's Christian Temperance Union were spurred to lobby the Board of County Commissioners for the reinstatement of Miss Mary Taylor as Probation Officer to the Juvenile Court of Hillsborough County in 1913. The Hillsborough Board of County Commissioners were further vilified when they offered Miss Taylor a salary of \$75 per month rather than the \$125 stipulated by law. See TMT 27 August 1913, p. 5; 1 September 1913, p. 12; 5 September 1913, p. 5.

142. RAG, 1885-1886, p. 34.

143. House Journal, 1901, p. 70.

144. House Journal, 1909, p. 59. African Americans were already discussing plans to raise money for a juvenile reformatory for Jacksonville in August 1897. One report of a meeting on 26 August stated it 'was attended by a number of the most prominent and influential negroes of the city, and resulted in a great deal of good work towards obtaining the location of the state reformatory for juvenile criminals in or near this city'. A committee had been appointed by the Board of Trade 'to work up enthusiasm in the enterprise among the colored people of the city'. According to speakers at this meeting, the action of the Board of Trade was interpreted as demonstrating 'the willingness of the white people to assist them in elevating the colored race, and that they desired to put themselves on record as showing appreciation'. See FTU 27 August 1897, p. 8.

145. Cash, p. 543; Carper, pp. 138-139.

141. Resolution of the Board of Commissioners of State Institutions, 28 January 1909, CLP Box 7/ Folder 7: Bids for Convict Leases, 1889-January 1909.

147. Kabat, p. 142.

148. RCA, 1913-1914, pp. 26-28.

149. RCA, 1911-1912, p. 21; Colburn and Scher, p. 262.

150. RCA, 1915-1916, p. 19.

151. Ibid., p. 10.
152. Lichtenstein, *Twice the Work of Free Labor*, p. 166.
153. Grantham, pp. 132-133; Mancini, pp. 224-226. For insights into the administration and realities of convict life on Mississippi's state prison farm see David M. Oshinsky, *"Worse Than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice*, (New York: The Free Press, 1996).
154. RCA, 1915-1916, p. 29.
155. Rothman, "For the Good of All," p. 277.
156. J. S. Blitch, "Should A Prison Have Farms?" APA Proceedings, pp. 40-42.
157. Ibid., p. 47. Thirty years later conditions for the thirty-eight white and 104 black women prisoners in Florida remained largely inadequate. See Sam Stickney, "Florida's Forgotten Women," *St. Petersburg Times* 1952, newspaper clipping at P. K. Yonge Library, University of Florida.
158. Mancini, p. 226; Lichtenstein, *Twice the Work of Free Labor*, pp. 160-161, 178-179.
159. Cutler I, pp. 179-180. Letters from clerks of the circuit courts to governors indicate that since 1900 county convicts had been hired out to private contractors who worked them on county roads for the Boards of County Commissioners. For example, Walter F. Warnock, clerk of Citrus County circuit court, reported that at least ten county convicts worked on the roads while others were hired out to J. Buttgenbach & Co, at \$10 per month for men and \$5 per month for women. See Walter F. Warnock to Hon. W. S. Jennings, 18 May 1903, in CLP Box 6 / Folder 5: Reports - Clerk of Circuit Court to Governor - Convicts in County Jails 1903 and 1905. Support for convict road-building came also from the *Pensacola Daily News* as long as it did not bring convicts into competition with 'honest labor'. See 1 February 1896, p. 1.
160. Colburn and Scher, pp. 206-207.
161. Carper, p. 302.
162. Colburn and Scher, p. 263.
163. Lichtenstein, *Twice the Work of Free Labor*, p. 15.
164. See Jerrell H. Shofner, "Postscript to the Martin Tabert Case: Peonage As Usual in the Florida Turpentine Camps," *Florida Historical Quarterly* 60 (October 1981): 161-173.
165. Mancini, p. 221.
166. Foucault, pp. 78-79.

167. David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*, (Boston: Little, Brown and Company, 1980), pp. 6, 61, 84. Rothman explores the search for alternatives to incarceration by benevolent and philanthropic-minded Progressive reformers pursuing humanitarian and scientific objectives to cure crime, delinquency and insanity. What evolved however was 'a highly discretionary system of justice', which reflected the failure of the reformers' goals and the triumph of administrative convenience.

168. APA Proceedings, p. 40. For a description of the Florida State Prison Farm see Herman B. Walker, "The State Prison Farm at Raiford," c1928, p. 1 (newspaper cutting), P. K. Yonge Library, University of Florida. Bitch could pick his convicts following a selection process of up to thirty days at Raiford. The incorrigibles or worst men were sent to the State Road Department.

169. Tebeau, p. 276.

170. The Industrial School for Girls at Ocala was established as part of a larger package of reform, Governor Sidney J. Catts's social welfare programme, which included the reorganisation of the state prison system and of the Marianna Industrial School for Boys in 1918-1921, and the establishment of the Florida Farm Colony for Epileptic and Feeble-minded Persons at Gainesville, which was opened in November 1921. See Steven Noll, "Care and Control of the Feeble-Minded: Florida Farm Colony, 1920-1945," *Florida Historical Quarterly* 69 (July 1990): 57-59.

171. Mancini, p. 219. Ayers argues that 'the best that concerned citizens felt they could win from the lease was humane treatment; the ideal of reform had long since died with the penitentiary. The ideal of moral regeneration, always tenuous even in the best penitentiary, was seldom even mentioned in connection with the convict lease system'. See Ayers, *Vengeance and Justice*, p. 207.

172. Grantham, p. 128; Isabel C. Burrows, "Life in Southern Prisons," *Harper's Weekly*, 34 (2 August 1890): 603-607.

173. Colburn and Scher, p. 259.

174. Drobney, p. 431.

175. Berry, p. 483.

176. Blake McKelvey, "Penal Slavery and Southern Reconstruction," *Journal of Negro History* 20 (April 1935): 153-179; Blake McKelvey, "A Half Century of Southern Penal Exploitation," *Social Forces* 13 (October 1934): 112-123. Few Americans in the early republic seem to have been troubled by the resemblance of the penitentiary to slavery, and many penitentiary advocates such as Benjamin Rush were also prominent in the abolitionist movement. Penitentiary inmates, however, likened their condition to slavery. See Hirsch, pp. 75-77, 102, 171.

177. Ayers, *Vengeance and Justice*, p. 191.

178. Gangs were used on plantations and in railroad construction, while task systems suited phosphate mines and turpentine farms. A task-squad system used in turpentine production of the piney woods of Georgia, Alabama and Florida. Both systems operated with quotas that had to be met under threat of physical punishment. See Mancini, pp. 20-24, 39-41, 43, 45-46.
179. Ibid., pp. 22-23, 37-38.
180. Michael Ignatieff, "State, Civil Society, and Total Institutions: A Critique of Recent Social Histories of Punishment" in Tonry and Morris, eds., p. 170.
181. Blake McKelvey, "The Prison Labor Problem, 1875-1900," *Journal of American Institute of Criminal Law and Criminology* 25 (July 1934): 267.
182. Ayers, *Vengeance and Justice*, pp. 220-221.
183. Foucault, p. 124.
184. Mancini, p. 21.
185. Lichtenstein, *Twice the Work of Free Labor*, p. 165.
186. House Journal, 1901, p. 69.
187. RCA, 1911-1912, p. 22. According to the State Comptroller, the State of Florida received \$2,722,620.14 from the leasing of state prisoners in the period 1880-1912. See RCA, 1911-1912, p. 9.

CHAPTER 2

HONOURABLE MEN AND DISCIPLINARY SUBJECTS

The fact of the matter is, the governor of Florida and his cabinet are probably the hardest worked people in the State, for each legislature for many years has added first one duty and then another to their original duties . . . That [pardon board members] are able to attend to all of their various other duties and give as much attention to pardons as they do is remarkable and creditable too.¹

The demand for the hour in America above all countries, is for jurors with consciences, judges with courage, and prisons which are neither clubs nor health resorts.²

The men who sat on Florida's State Board of Pardons presented an image of caution, conservatism and pragmatic decision-making. The first part of this chapter endeavours to build a profile of these men, the judges and prosecuting attorneys with whom they consulted, and the lawyers who appeared before the Board. In the late nineteenth and early twentieth centuries the Florida bar was undergoing transformation from a provincially-oriented rural-planter tradition to a highly-trained body with extensive political, economic, social and legal power. This transformation occurred in the context of broader southern and national trends such as the rise of the professions, particularly law, medicine and engineering, and of the expansion of the urban middle class in general. Attention is given to the

religious beliefs, notion of honour, backgrounds of migration and settlement, legal training and upward mobility and economic investment that helped define the attitudes of Florida bar members to social inferiors. Social and geographic mobility, economic opportunity and terms of social and cultural reference for both lawyers and clients, board members and pardon applicants were shaped by the nature of economic development in Florida in the 1890s and early twentieth century.

After 1896 the Board comprised the chief executive, chief legal officer, chief fiscal officer, keeper of all official records, and the chief supervisor of the State Prison System. Most of the Board members who served between 1889 and 1918 were born during the middle decades of the nineteenth century; many were second generation Floridians educated during the turbulent postwar and Reconstruction years. They were drawn from the ranks of the 'best men', an influential or ruling elite of wealthy landowners and planters and/or members of Florida's rising industrial-commercial elite of merchants, bankers and shippers, or professional men, usually physicians, lawyers and clergymen, linked by marriage, friendship and business associations.³ The origins of many of these men however lay not in a propertied or monied class; the governors in particular were almost entirely self-made men, who according to Colburn and Scher 'exemplify the upwardly mobile, ambitious young men in the tradition of American "Horatio Alger" success stories'. They point out that many twentieth-century Florida governors came from families where there was a precedent or tradition of 'public service or service-mindedness',⁴ thus family relationships provided important avenues to political office. Family connections were extremely important in a late

nineteenth/ early twentieth-century society which continued to value personal contacts and initiatives in the midst of profound change.

Board members were predominately lawyers or other professionals who went on to enjoy long careers in state and local politics. Dr. John L. Crawford, a Wakulla County landowner and planter, served as Secretary of State continuously between 1881 and 1902. Following his death in 1902, Henry Clay Crawford (John L. Crawford's son) was appointed by Governor William S. Jennings to serve out the father's term; Henry Clay Crawford was elected Secretary of State in his own right in 1904, serving until 1921. The structural and political autonomy of Cabinet officers meant that they much more than governors could firmly establish themselves in state office and gain a level of expertise about state government and politics that allowed them to operate independently of governors if they chose to do so. In contrast to Cabinet officers, '[t]he governor has been only the head of a winning faction, and his claim to statewide leadership usually has had to rest precariously on such factors as his personality, his stand on particular issues, his ability to use patronage, and his winning percentage in the Democratic primary [after 1901]'.⁵ The statewide constituencies of men like the Crawfords were ultimately more stable and more permanent than those of the governors they served.

Ayers observes that politics was of enormous importance to most southern men, whether Democrat, Republican or Independent. Political affiliations could determine friends, business deals and clients, courtship and marriage prospects, while a career in politics was a recognised route to social mobility and enhanced social status, especially in a state where politics was much more 'open, fluid [and]

discontinuous' than in other southern states.⁶ Networks of clients and contacts underscored the connections in counties, towns and cities between lawyers and politics. Patronage and party loyalty were the axis upon which the Democratic and Republican party organisations turned, reinforcing the importance of personal connections at the local level.⁷ Patronage was an essential tool for Florida governors trying to control their administrations, influence legislators and local officials, and build up a base of support. Use of the pardon power was one part of the patronage system; political appointments, for example, to court positions, were another.⁸ As in other southern states, Florida court days attracted large audiences especially in rural areas. The majority of state legislators were lawyers or had undertaken legal training, those who practised were mostly small-town lawyers with a tendency to conservatism, especially on issues of race. Younger lawyers, young men from good families, welcomed the business and connections that positions such as County Solicitor or State Attorney could bring: 'If he did a good job in an important case, or even if he were merely flamboyant and entertaining, a prosecutor could attract an important following among the men who loitered around Southern courthouses'.⁹

The governors and Board members in this study held political office in a period of significant social and economic change but the small-town culture of their youth, notions of honour and their religious beliefs formed their moral outlook; they defended traditional values, family, hard work and an orderly self-disciplined life. Strict adherence to rigid standards of personal conduct and belief, patriotism, love of the South, the supremacy of the Democratic party, Christianity and chivalry for white women, were not only expected but demanded of the 'best

men' and women, both Florida-born and emigrants.¹⁰ *Noblesse oblige* or an obligation to demonstrate generosity, chivalry, benevolence and exhibit responsible behaviour to the less fortunate characterised male attitudes toward 'respectable' white and black social inferiors who were perceived to be subservient and non-threatening. Hostility and violence were sanctioned for all others. Peter Stearns's exploration of domestic standards for anger control in the nineteenth century emphasises the middle class's concern with personal behaviour and manners. Whereas before the 1860s, 'the internalisation of the rigorous norms of anger control was only beginning, even among the northern middle class', after the Civil War concern with childish aggression, Social Darwinism and self-control, meant that anger had to be channelled into approved outlets such as business or competitive sports. Advice literature emphasised gender differentiations; while girls were taught not to show anger, boys enjoyed greater latitude. This development coincided with other evolving standards of masculinity.¹¹ Governor Edward A. Perry represented the best of southern manhood: 'A thoughtful and affectionate husband and parent, a devoted friend, brave soldier, a loyal and patriotic citizen, a faithful public officer, a wise counsellor, an ardent and zealous churchman and a conscientious, charitable and consistent Christian gentleman'.¹²

Board members were evangelical Protestants rather than Catholics. Although Catholics had lived in Florida since the Spanish occupation began in the sixteenth century, the Roman Catholic Church lost most of its members following the Spanish departure in 1821, and by the late nineteenth century, Catholics composed a very small percentage of the state population. In the second decade of the twentieth century, it was gubernatorial candidate and subsequent governor,

Sidney J. Catts, who skilfully exploited the latent anti-Catholic, racial and class prejudices of rural Floridians, even though Roman Catholics accounted for only three percent of the state population in 1916.¹³ The Florida governors and other Board members discussed below were usually Baptists, Methodists or Episcopalians; this reflected their origins and settlement in rural and small-town north Florida counties located along the southern border of the Bible Belt. Religious affiliation was an important indicator of social status and recognised as such in southern religious folklore where 'a Methodist was a Baptist who wore shoes; a Presbyterian was a Methodist with a bank account; an Episcopalian was a Presbyterian who lived off his investments'.¹⁴ Methodist, Presbyterian and Baptist faiths in the mid and late nineteenth century were evangelical and fundamentalist, heavily moral and laid stress on individual responsibility. Evangelical Protestantism embodied a belief in the social responsibilities of the faithful to public duty, and so encouraged active, public-spirited life and service. While there arose potential collisions between, for example, religious beliefs and the content of college science courses on Darwinian evolutionary theory that could produce personal crises for young men like William Jennings Bryan, politics and political service were loaded with moral meaning and 'fed a rich reform tradition in American religion, pushing many believers from spiritual retreat to worldly activism'.¹⁵ According to Roy Ashby this gave rise to a form of 'political religion' that blended civic duties of republicanism with evangelical piety.¹⁶

'Honour', a gendered code of conduct and set of values specifically for adult white males,¹⁷ was also central to the postwar belief system imbued by white Floridians. Ayers argues: 'In reconstructing the workings of Southern

honour and violence, it is crucial to understand that Southern white men among all classes believed themselves "honorable" men and acted on that belief'.¹⁸ Anthropologist Julian Pitt-Rivers describes honour as a 'multifaceted notion open to interpretation by different classes within society' and, as 'not only the internalization of the values of society in the individual but the externalization of his self-image in the world'.¹⁹ It is perhaps most useful to view the members of the Board of Pardons in terms of the 'notion of a community of honourable men' mediating between the individual aspirations of offenders seeking clemency and the judgement of Florida society on their criminal acts. At the same time the decisions of this 'community of honourable men' inevitably reflect the imposition of the dominant white middle class evaluations of the criminal behaviour of lower class, black and female offenders.

Like the Crawfords many Board members grew up in locally distinguished and respected families in small-town and rural northern and central Florida and where farming was the main source of income and way of life where traditional southern values of white supremacy, black inferiority and strict patriarchy regulated social relations. Their backgrounds, status and outlook, which are the focus of this chapter, set them apart from most criminal offenders and state prison inmates, and this is why the latter needed like-minded advocates to assist in their petitions for clemency. Competing and disparate value systems came into conflict at all stages of the criminal justice process, and the Board of Pardons was intimately bound up in a process where moral boundaries were both repeatedly challenged and maintained.

Full-time politicians

No pardon, commutation or reprieve could be granted without the consent of the governor, and over the course of the thirty year period under scrutiny, nine different governors (all Democrats as there was no Republican governor after 1877 until the late twentieth century), evinced contrasting priorities in their attitudes toward the pardoning power and the scheduling of pardon board meetings, no doubt shaped partly by their working relationship with other Cabinet officers and their involvement with other boards and agencies. The governors' differing attitudes toward the pardon board did however impact on the accessibility of the Board to petitioners. The Board met every Friday where possible during Governor Mitchell's term of office in order to avoid interference with the Supreme Court schedule. A backlog of applications occurred in 1897 after Governor Bloxham dispensed with regular meetings, preferring to call the Board only when after reading a clemency application he was in doubt or had decided to vote in favour. He regarded the Board as 'a tribunal to which convicts have the privilege of appealing for mercy', rather than a 'court of last resort' open to all.²⁰ Under Governor Broward, the Board met at the convenience of all five members.

During the first year of Governor Gilchrist's term, regular monthly and emergency meetings took place. From January 1910 the Board was convened on the first Thursday of the odd months of the year.²¹ The practice of keeping an official record of the decisions of the pardon board began at the first Board meeting of the Gilchrist administration; the pardon board secretary being charged with this duty. A further change occurred in 1911 when the Board met only in executive session. Pardon board meetings were no longer open to attorneys, an

applicant's friends or relatives, or other interested parties, in order to 'spare the embarrassment of Board members at having to deny an application under such circumstances'.²²

Florida Governors and the dates of their administrations:

Edward A. Perry	1885-1889
Francis P. Fleming	1889-1893
Henry L. Mitchell	1893-1897
William D. Bloxham	1897-1901
William S. Jennings	1901-1905
Napoleon B. Broward	1905-1909
Albert W. Gilchrist	1909-1913
Park Trammell	1913-1917
Sidney J. Catts	1917-1921

There were many routes to the governorship in this period. Edward Perry did not hold any political office before receiving the gubernatorial nomination at the Democratic State Convention at Pensacola in 1884 but his popularity as a Confederate war hero ensured his election. In contrast, Park Trammell began his political career as Mayor of Lakeland in 1900, served Polk County as a Representative then Senator, and the state as Attorney General from 1909 to 1913, Governor 1913-1917 (and at age thirty-six was the youngest man to assume the chief executive office of Florida), and as United States' Senator for Florida from 1917 to 1935.²³ Trammell was the only governor in the period covered by this

study to spend time in a Cabinet office before becoming Governor. Rothman notes that by the 1890s politics had become a full-time profession dominated by lawyers or men who had read law.²⁴ Like other areas office-holding was undergoing professionalisation, and Trammell's career illustrates that the 'culture of professionalism' had taken root in Florida.

Fleming and Bloxham were native Floridians, Perry had transplanted from Massachusetts to Georgia then Alabama in the 1850s, while Mitchell was a native of Alabama. Another Alabama emigrant, Sidney J. Catts, governor from 1917 to 1921, was ordained as a Baptist minister in 1886, and occupied pulpits in Alabama until his move to Florida in 1910. The first governor of the twentieth century, William Sherman Jennings, was a native of Illinois, educated in the Illinois public schools, at Southern Illinois Normal University 1879-1883 and Union Law School in Chicago 1884-1885, after which he migrated to Florida. While college and law school training were less 'mandatory' before 1900, these officeholders were nevertheless usually well-educated men often with public school, college and law school experience. When he was inaugurated in January 1901 Jennings was only thirty-seven years old yet had been active in Hernando County and state politics for fourteen years. Most lawyers gained some political experience by age thirty, while the 'widespread opportunity to enter the bar opened political power to men of various social classes'.²⁵

Governor Napoleon Bonaparte Broward's ancestors were planters, soldiers, and scholars while he is described by his biographer as: 'Primarily a man of the people, he was their spokesman in a troubled age, when they were divided by resentful sectionalism and bitter memories'.²⁶ Democratic party politics in the

1890s and 1900s was highly factionalised. The fight between pro-silver and agrarian-supported 'straightouts' and the 'antis', who were identified with railroad and corporate interests, and the Mitchell administration, dominated state politics. The straightout faction in Duval County attracted younger men of Jacksonville such as Frank Pope, J. M. Barrs, Duncan Upshaw Fletcher, Jennings and Broward, while Broward's support base in the 1904 gubernatorial election drew heavily on the rural constituency of farmers, cattlemen, and small businessmen, as well as urban labour (Broward was the first Florida governor to have lived in a large city).²⁷ Ayers views Broward as epitomising a new type of southern leader that was emerging in the first decade of the twentieth century; a post-Populist politician who rallied against railroad and corporate interests, played on racial fears, used the primary to win gubernatorial office, but was also willing to use the power of the state in more proactive ways, partly because disfranchisement and the primary altered the attitudes of white constituents towards government.²⁸

Orphaned at age twelve Broward had experienced an uncertain transition to adulthood, had been engaged in various occupations from logger to farm hand to sailor, eventually becoming captain and owner of a steamboat, and later phosphate developer. In the late 1880s he gained popular support and fame by running the Spanish blockade to deliver war *matériel* to Cuban revolutionaries. One example of a late nineteenth century man climbing the political ladder via law enforcement posts is Broward who, at age thirty, was appointed Sheriff of Duval County by Governor Perry, and was elected to the same in 1889, 1892, (removed from office in 1894 for exceeding his authority), 1896 and 1900. County sheriffs were the front line against crime in Florida, increasingly complemented by the

emergent professional police forces in the major cities during the second half of the nineteenth century.²⁹ Broward, like Mitchell whose judicial career 1877-1892 had encompassed the benches of the circuit and state supreme courts, had extensive first-hand knowledge of criminal offenders (Duval County consistently processed the largest numbers of state and county convicts), and direct experience of the administration of the death penalty, having presided at several executions. It is perhaps not coincidental that the largest numbers of pardons (287) were issued during the Broward administration of 1905-1909. This is not to say that other governors were less qualified to evaluate questions of law or criminal responsibility; all except Broward, Gilchrist and Catts had read and practised law.

Many Board members of the 1890s, like members of the Florida bench, were older gentlemen who in the antebellum era had identified with the old slaveholding class and its 'paternalistic ethic'.³⁰ They had been reared before the war in a tradition of personal honesty and strict integrity, had served the Confederacy, had matured and been trained in leadership on the battlefield, and would use their military titles for the rest of their lives.³¹ Successive Governors Perry, Fleming, Mitchell and Bloxham, all born in the 1830s or early 1840s, traded on their status as lawyers, their military service to the Confederacy, and their conservative Democratic political credentials. Comptroller William H. Reynolds joined the Confederate Army in 1861, serving in Company E of the Twenty-Ninth Georgia Regiment under General Bragg and later General Joseph E. Johnston.³² State Attorney Thaddeus A. MacDonnell served with the First Florida Regiment as a captain under General Bragg, was appointed to President Jefferson Davis's special staff until the close of the war, and was wounded at Shiloh.³³ Judge

Morris A. Dzialynski volunteered as a private with the Madison Grey Eagles at the beginning of the Civil War and served with the Third Florida Regiment until the end of the War despite being wounded at Perryville.³⁴

Candidates and their lawyers were notified of the outcome of their applications by the pardoning board secretary. Profiles of the three men in post between 1889 and 1918 reflect the different career paths between a generation of soldier-politicians and that of a new emergent bureaucratic-oriented urban middle class.³⁵ Governor Fleming's private secretary, Charles A. Finley, son of General Jesse Johnson Finley, a distinguished Florida military man, judge and politician,³⁶ was born in Marianna, Florida, in April 1849, and educated in the Marianna common schools. His collegiate education was disrupted by the outbreak of war and he served in the reserve corps toward the end of the Civil War, and later managed a civil agency of the Freedman's Bureau. In 1875 he purchased the *Lake City Reporter* and edited it for fourteen years until ill health forced him to give up, and was a delegate to the State Democratic Convention of 1876 which nominated the first Democratic governor since the end of the war. He was elected secretary of the Florida State Senate 1887-1893, then again in 1905, and served until 1929 when old-age forced him to resign.³⁷

In January 1893, Colonel David Lang became private secretary to Governor Mitchell, and served as secretary of the Board of Pardons until 1909. He reached the rank of Colonel in December 1862 at age twenty-five after the Battle of Fredericksburg, and enjoyed a distinguished military career in Confederate service in Florida regiments. A civil engineer and surveyor by trade, he was appointed Surveyor of Suwannee County 1866-1868 until the Republicans took over the state

government, then moved about Florida as a civil engineer until 1885 when Perry, his old commander and close friend, became governor. Perry appointed as Adjutant General in January 1885. During his eight-year tenure, Lang improved the training, equipment and organisation of the state troops, and became Major General of State Troops of Florida. As Adjutant General, Lang was responsible for overseeing the management of the prison system.³⁸ Lang's successor, George T. Whitfield, was born in Tallahassee in 1873 and educated at Johns Hopkins University (graduating in 1894) and the University of Maryland (1895-1896). He was admitted to the Maryland bar in 1896 and the Florida bar in 1897, and established a law practice in Tallahassee. He served as private secretary to Governors Gilchrist and Trammell, then was appointed Clerk of the Florida Supreme Court 1915-1939.³⁹

The sons of former Confederates, coming to age in the South in the 1890s and 1900s as the region glorified Confederate heroes of the 'Lost Cause',⁴⁰ staffed the Board and the ranks of Florida lawyers and politicians by 1900 and guided the state's criminal justice system through the first decades of the twentieth century. William Simeon Bullock, judge of the fifth circuit from 1901 to 1935, was the son of General Robert Bullock, active in the Seminole and Civil Wars. Judge Evelyn Croom Maxwell's father, Augustus Emmet Maxwell, Alabama plantation and large slave owner, together with James McNair Baker, father of Judge William H. Baker of Duval County, 1892-1901, were elected from Florida to the Confederate Senate. William Bailey Lamar's father Thomas Bird Lamar, a Florida State Senator, was colonel of the Fifth Florida Regiment and was killed in action at Petersburg, Virginia. In contrast, the father and grandfather of

Hillsborough County Solicitor William M. Gober served in the Union Army during the Civil War.⁴¹ Younger bar members saw service themselves in the Spanish-American and First World Wars. Governor Albert Gilchrist combined his political career as DeSoto County representative 1893-1905 with long military service in Florida as colonel on the staffs of Governors Perry and Fleming, as brigadier-general of the state militia under Governor Mitchell, and then enlisted as a private with the Third U.S. Volunteer Infantry in the Spanish-American War, rising to the rank of captain. Charles Oscar Andrews served as captain of Company M, First Florida Regiment during the Spanish-American War but did not leave Florida, while Samuel J. Barco and James Earnest Yonge, Jnr, served with the American Expeditionary Force in France.⁴² For a nation and state with a small military establishment, it was perhaps extraordinary how important the role of military service was to the political careers of these men. A significant number of them had experienced disciplined, hierarchical structure in their formative years and this undoubtedly influenced their attitudes towards social inferiors or convicts whose actions seemed to them to epitomise a casual and undisciplined moral outlook and the absence of standards of personal conduct.

The legal profession, occupational and geographic mobility

Lawyers were valued members of a stratified agrarian and commercial Florida society that was experiencing accelerated pockets of urban and industrial expansion. Small-town and country lawyers could command much local respect, loyalty and trust from clients comprising friends, acquaintances, neighbours and townspeople. They represented the 'democratic flank' of the legal profession

because they 'assured equal opportunity, social mobility, and professional respectability to the man of humblest origins'.⁴³ Auerbach's portrait of an early nineteenth-century country lawyer has resonance with later nineteenth-century small-town Florida practitioners:

Practicing alone in a small town, he prepared for his profession by reading Blackstone and Kent and by apprenticing himself to an established practitioner for whom he opened and cleaned the office, copied documents, and delivered papers. The commercial bustle of the city was another world. Whether he rode the circuit or lounged around the local courthouse, he absorbed the camaraderie of his profession and cherished the respect of his neighbors. An independent generalist, he served all comers, with no large fees to turn his head toward a favored few.⁴⁴

However, many late nineteenth-century promising young lawyers struggled in rural law practices on paltry monthly earnings and faced limited social, economic and political prospects. The more ambitious uprooted themselves to urban centres and larger law practices, as part of a larger region-wide migration from the country to the towns in the 1880s and 1890s (that included people from every level of rural society, from professional men to tenant farmers).⁴⁵

Biographical sketches of Florida Board members and lawyers, from ex-Yankees to native-born southerners, reveal extensive evidence of mobility, both geographical and social, and a variety of educational backgrounds.⁴⁶ Young lawyers often left their native state to begin legal practice (the more wealthy left the state to study law at college). In 1911 Associate Justice Charles B. Parkhill (born Leon County, 1859) was the only native-born Floridian Justice of the Florida Supreme Court. Available biographical information suggests there was no decline in post-bar admission mobility as attorneys continued to move to counties and cities in central and southern Florida to pursue specialisms and clients as these

areas opened up to development.

Information on incomer Florida lawyers indicates that many attorneys came from lower middle class and middle class backgrounds; their fathers were farmers, landowners and professionals.⁴⁷ J. Emmett Wolfe, Judge of the First Judicial Circuit of Florida 1907-1914, United States' Attorney for the Northern District of Florida 1895-1898, and Judge of the Criminal Court of Record of Dade County 1918-1921, was born in Butler County, Illinois, in 1859, but his mother and father were natives of Pennsylvania. The family moved to Pensacola in 1866 where his father, J. Dennis Wolfe, was a lawyer and newspaper publisher. Horace Caldwell Gordon, born 1872 in Cleveland, Ohio, moved to Tampa to set up a law practice in December 1895.⁴⁸ Florida's emigrant bar came both from other parts of the United States and from overseas. Attorney Matthew B. Macfarlane was born in Scotland in 1861 and the family emigrated to Massachusetts in 1865. He completed his public school education in Massachusetts and Minnesota, then relocated to Florida in 1883 and became manager of a shoe store in Jacksonville. In 1885 Macfarlane moved to Tampa to study law under the tutelage of his brother Hugh C. Macfarlane, with whom he formed a law partnership after being admitted to the Florida bar in 1886.⁴⁹ Such mobility meant that the demography of the Florida bar was less patrician and more fluid than in northeastern states.

These features may also be attributable to the peripatetic character of the courts. Defendants in Florida County jails had to wait until the circuit reached the county courthouse, usually every six months, where the superior court judge, state attorney and defence lawyers arrived to clear the backlog of cases within the allotted couple of weeks. Bloomfield describes circuit-riding frontiersmen as

‘footloose, country lawyers who accompanied a judge from one small community to another, picking up clients whenever they could’.⁵⁰ The broadening of recruitment patterns to the professions, especially law, coincided with the rise of the middle class in the South, a middle-class push for more structured professional training, and the establishment of permanent circuit courts. For example, the Florida legislature provided Dade County with a permanent circuit court in 1917 with a permanent sitting judge. The county had already established a Criminal Court of Record, which dealt with all criminal cases except those involving capital offences, ten years earlier.⁵¹

At least half of the sixty-four lawyers profiled were born in Florida, two-thirds of whom were second-generation Floridians. Third-generation Florida lawyers were usually descended from original settlers of Territorial Florida, whose male members dominated the political life of the territorial period and beyond. John Locke Doggett’s (born in Jacksonville in 1868) grandfather settled in Duval County in 1820 and was one of the founders of Jacksonville. He was president of the Legislative Council of Florida 1825-1830, then lawyer and circuit judge of the Northern District of Florida 1831-1837.⁵² William H. Jackson, solicitor of Hillsborough County 1913-1917, was born in Hernando County in 1886, and was the grandson of early settlers and farmers who arrived in Hillsborough County in 1842, and George B. Wells, ‘a scion of old and honored Southern families,’ was born in Hillsborough County in 1868, grandson of pioneer settlers in that county from Madison County in 1846.⁵³ Many transplanted bar members came from the neighbouring states of Georgia and Alabama, or other parts of the South. Duncan Upshaw Fletcher, leading Florida politician of the late nineteenth and early

twentieth centuries, was born in Sumter County, Georgia in 1859, 'of good old Virginian ancestry'. The family became Monroe County landowners after the Civil War. Scott M. Loftin was born in 1878 in Montgomery, Alabama. His father and mother were both natives of Alabama, and when the family moved to Pensacola in 1887, the father, William Marion Loftin founded the *Pensacola Journal*.⁵⁴ Biographical sketches of these men highlight the paradoxical nature of Florida lawyer-client relations: a highly mobile white male middle class which was intensely suspicious of a highly mobile group of lower class men and women.

Legal training and education

In the second half of the nineteenth century white males regarded the legal profession as an obvious vehicle for respectability and upward mobility.⁵⁵ Between the 1880s and 1910s Florida lawyers enjoyed four avenues of entry to the legal profession: self-directed reading and study; work in the office of clerk of a circuit court or court of record; apprenticeship or clerking for a reputable lawyer; and law school. By the late nineteenth century law school was recognised as an acceptable alternative to apprenticeship, eventually supplanting the apprentice route, but in 1890 the majority of American lawyers had not studied at either college or law school (only twenty percent of lawyers nationally had been to law school) and no state required attendance at law school for admission to the bar. this situation spurred calls from the recently-formed American Bar Association for increased standardisation and professionalisation.⁵⁶

Many Florida lawyers used the apprenticeship avenue which could provide essential connections and a route to enhanced political and social status. Future

Commissioner of Agriculture Benjamin E. McLin read law under the direction of his father Colonel John B. McLin and was admitted to the Tennessee bar in 1875. He practised with his father for ten years until the latter's death, then relocated to Umatilla, Florida to practice law and engage in orange and vegetable cultivation, as well as lumber and milling (until 1894 when a fire destroyed his saw mill and the 'great freeze' decimated his orange crop). John C. Avery, a graduate of the University of Georgia, studied law in the office of the later governor, Edward A. Perry, and was admitted to the Florida bar in 1873. Perry then appointed him first Judge of the Criminal Court of Escambia County but Avery resigned a few years later 'because of its interference with his general practice'. Francis Beauregard Carter, studied law in the office of Benjamin S. Liddon with whom he set up partnership after his admission to the Florida bar in 1882. In 1894 Carter established a partnership with his brother John H. Carter until 1897 when the former was appointed Associate Justice of the Florida Supreme Court to fill an unexpired term caused by the resignation of Benjamin S. Liddon. Attorney-General William Hull Ellis, began his legal studies while working as a store clerk then read law in the offices of Quincy lawyers Phil B. Stackton and Judge H. F. Sharon, and was admitted to the Florida bar in 1889.⁵⁷ Because a college degree was still not required for admission to the bar or professional respectability, prospective lawyers, regardless of financial circumstances and family obligations could, after obtaining a secondary education, enter law offices to gain professional experience and competency. In fact, from the 1860s to the early twentieth century, the vast majority of legal professionals 'still experienced only on-the-job legal education'.⁵⁸

Auerbach argues that the financial burden of funding both undergraduate and legal education, 'in addition to the substantial loss of income during the seven years required to earn two degrees, eliminated the most impoverished, among whom racial and ethnic minority group members were disproportionately concentrated'.⁵⁹ Such expense could also be prohibitive for sons of impoverished ex-Confederates. Some Florida attorneys had previous employment experiences in journalism, farming and as professional military men. Several prominent lawyers and judges started their wage-earning lives as public school teachers. Washington County judge 1910-1911 and assistant Attorney General 1912-1919, Charles Oscar Andrews, studied law while teaching in Florida public schools and was admitted to the Florida bar in 1907 at age thirty. William M. Gober taught in the Georgia public schools for two years, then worked for the Commerce Telephone and Southern Bell Telephone Companies for over ten years. While in charge of the Dunnellon Phosphate Company Telephone Service 1905-1907 he decided to enter the legal profession. He completed legal studies at night because of his daytime responsibilities which also included Justice of the Peace, City Clerk and tax collector of Dunnellon (all elected posts) and was admitted to the bar in 1910.⁶⁰

Judge James W. Perkins became a sailor at age thirteen. Five years later he became a clerk at a Fort Myers store, and saved enough to pay his way through Eastman Business College from which he graduated in 1884. In 1889 he became an assistant bookkeeper in the large DeLand mercantile house of Dreka & Company, then resigned to become first Deputy Sheriff of Volusia County. In 1892 Perkins resigned from law enforcement to enter law school at Cumberland

University in Tennessee. After his graduation in 1895 Governor Mitchell appointed him prosecuting attorney for Volusia County, and he remained in this office until 1904. Cromwell Gibbons worked in the newspaper business before moving to Florida in 1888 from New York, and was admitted to the Florida bar in 1891. As institutionalised legal training was increasingly regarded as essential for leading legal professionals, it was accompanied by a decline in the status of the apprenticeship route. By 1920 Florida attorneys had increasingly completed some form of undergraduate and/or legal studies. James E. Yonge, Jr, for example, graduated from Washington and Lee University in 1913, and gained his law degree from the University of Florida in 1916.⁶¹

The American Bar Association was organised in August 1878 by nearly one hundred elite lawyers vacationing at Saratoga Springs in New York state, and energised by young Connecticut lawyer, Simeon E. Baldwin. These elite northeastern and southern lawyers were motivated by concerns over professional standards (in 1860 only nine of thirty-nine states had any educational requirements for admission to the bar).⁶² In the 1890s the American Bar Association spearheaded a vigorous internal debate within the legal profession over qualifications for admission to the bar, prompted by the proliferation of law schools and a corresponding increase in the number of lawyers (including ethnic lawyers). Issues of mobility, stratification and structure underlay the debate over the sufficiency of high school, college or law school training for entry into the profession.⁶³ ABA campaigns to persuade legislatures to introduce state bar examinations also gathered steam in the 1890s and 1900s, and by 1917 centralised boards of bar examiners had been established in thirty-seven jurisdictions.⁶⁴

Auerbach argues that the country lawyer interpreted these reforms as attempts to undermine his place in the profession.⁶⁵

The same men who supported 'improvements' in legal education such as the case book method also sought to further promote professional reform by raising admission standards to the bar.⁶⁶ In most southern states admission to the bar was through the state courts. A prospective candidate, usually male and over twenty-one years of age, would appear before a committee of three practising attorneys who would examine the candidate's legal knowledge and character. Bar examinations were oral and casual. If the candidate was 'possessed of sufficient skill and learning in the science of law' he would be granted a license by the Supreme Court.⁶⁷ Exceptions to the age requirement could be made as in the cases of J. Walter Kehoe, Scott M. Loftin and Francis P. Fleming, Jr., who obtained licenses by special legislative acts to practice law in Florida at ages nineteen and twenty. Loftin had undertaken legal studies at Washington and Lee University 1898-1899 but had been unable to complete his education because of his father's death. In the 1880s and 1890s the legal establishment sought to raise standards of admission to the legal profession through required formal periods of study and apprenticeship, permanent examining committees, and written bar examinations were to be adopted in each state.⁶⁸

William H. Ellis, Attorney General 1904-1909 during Governor Napoleon Bonaparte Broward's administration, and James Bryan Whitfield, private secretary to Governor Edward A. Perry, State Treasurer 1897-1903, and Attorney General 1903-1904, went on to become Justices of the Supreme Court of Florida. Whitfield served as Chief Justice in 1905 and 1909-1913. Most judges in this

period began their careers before the rise of the law school, gained admission to the bar by reading with either an attorney or a judge, and usually built their careers at the local level. Judgeships at the county level, significant public offices, were often occupied by younger members of the profession in nineteenth-century Florida. William Jennings was appointed County Judge of Hernando County in May 1888, at age twenty-three, two years after he had been admitted to the Florida bar. The ABA hoped that only the most accomplished members of the legal profession would become judges but this ideal was recognised as being undermined by the election of judges on the basis of social and political criteria, and the extension of judicial office to practitioners lower down the legal ladder.⁶⁹ Many judges at the county level were drawn not from the upper echelons of the legal profession but elected or appointed more for their perceived common sense and political connections than for their legal knowledge or intellectual capabilities. Some were drawn from families of the prosperous and ambitious middle class, or affiliated by marriage and association with the 'best men'. Kinship and friendship also penetrated the selection process, but as Hall points out, judges represented a tiny minority of the population, so a socially random selection process was impossible, while kinship was important as it provided encouragement and incentive.⁷⁰

Instead of being 'a fitting conclusion to a career of exceptional professional accomplishment', American judges usually won office because of social and political criteria. Botein argues that circuit-riding judges could at times resemble travelling lecturers 'preaching moralistically on contemporary topics in their charges to grand jurors'.⁷¹ The bench at the state and county levels was highly

politicised and partisan:

Critics indicted popularly elected appellate judges as mediocrities at best and incompetents at worst. They charged first, that popular election brought persons of questionable moral character and unfit judicial temperament to the bench; second, that elected judges lacked sufficient technical sophistication to understand fine points of law and write able opinions; third, that these shortcomings stemmed from inadequate formal academic preparation, shoddy legal training, insufficient preelection judicial experience, and excessive political activism.⁷²

It was also tempting to convert the prestige and experience gained in high judicial office into a potentially rewarding private law practice, a custom which the ABA found distasteful, but was pursued by several retired members of the Florida bench. Francis B. Carter resigned from the first judicial circuit judgeship in 1908 to resume private practice in the Pensacola firm of Blount, Blount and Carter. A subsequent firm, Carter & Yonge, specialised in corporation law (they acted as counsel in Florida for the Louisville and Nashville Railroad, Florida Public Utilities, Gulf Power, Western Union Telegraph, Southern Bell Telephone, American Express and numerous insurance companies).⁷³ Botein contends that despite these shortcomings, 'the bar in America needed exemplary judges to sustain its professional ideology and was prepared to invent them if necessary. Judgeship, representing an ideal of "primary orientation to the community interest", was an essential ingredient in the symbolic language of the American legal profession'.⁷⁴

Mary Berry argues that nineteenth-century judges adhered as a rule to legal formalism and emphasised their understanding of appropriate judicial behaviour. 'It also served to protect a mostly elected judiciary from political criticism by mystifying the law and the decision-making process'.⁷⁵ Inevitably, significant

differences existed between local people's perceptions of the best use of the laws, morality and offensive behaviour and the concerns of judges: 'Patriarchy and racial and sexual subordination were the rule' in the judgements of the upper middle-class, well-educated and usually all-white male legal elites. 'Everyone had a role to play. White women were fragile, weak, and in need of male protection; African Americans were subjugated but legally free; white men must exhibit their power and control in the family and over race and class inferiors or risk opprobrium and punishment'.⁷⁶

Pardon board members, judges and attorneys tended to be upper middle class, well-educated white males or self-made men, while convicts were typically lower-class or labouring illiterate black males. Jurors tended to be labourers or artisans. A highly stratified class system encased the personnel who participated in the different components of Florida's criminal justice system. Jurors were supposed to be average male citizens chosen at random, but state laws listed classes of people who were excluded, or could excuse themselves. In the 1890s Florida, in addition to attorneys and judges, teachers, doctors, pharmacists, 'ministers of the gospel, one miller to each grist mill, one ferryman to each licensed ferry, telegraph operators', as well as 'ten active members of any fire company [and] six active members of any hose company', were among those who were excused from jury duty. Those eligible to serve then had to survive the *voir dire* process in which lawyers from each side could 'challenge' candidates using a limited number of 'preemptory challenges' and an unlimited number of challenges 'for cause'.

Relatives of the defendant or victim, 'habitual drunkards', and those who

had already formed an opinion as to the guilt or innocence of the accused were removed 'for cause'. At the end of the trial of Alexander Campbell, who was convicted of first degree murder in 1891, one of the jurors was found to be guilty of perjury as he was related to the victim and her family, and had further been heard to say 'that if he was put on the jury he would hang the prisoner',⁷⁷ but this did not affect the conviction or sentence of life imprisonment. In capital cases, the prosecution could also challenge anyone who was opposed to the death penalty as under the Acts of 1868: 'No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be allowed to serve as a juror on the trial of any capital case'.⁷⁸

It was not unusual for African American men to be called for jury service in Duval County in the 1890s, and several were called in the Campbell trial. One potential black juror, J. S. Bartlett, however, was 'dismissed as not being intelligent enough and having an opinion of the matter' of Campbell's guilt. In the nineteenth century, a defendant was 'presumed' to be innocent, and the jury were supposed to treat him as if he was a complete stranger with no history or prior life.⁷⁹ This could be problematic both in small towns, such as St. Augustine with a population of 4,742 in 1890, and in larger cities such as Jacksonville with a population of 17,000. When the jury was finally assembled for the trial of Alexander Campbell in 1891, it included one African American member, J. H. Brown. Such jurors were usually the sole non-white jury member. The disappearance of black jurors from Duval county jury panels in the first decade of the twentieth century mirrors the declining black political influence in Jacksonville municipal government in the same decade.⁸⁰ Following the

disfranchisement of black and illiterate lower-class white voters, the adoption of Democratic primaries in Florida counties in 1897, and the enactment of a statewide primary law in 1901, further consolidated white Democratic political supremacy, by permitting competition among white men of differing political views without necessitating the involvement of black voters. Further, jurors, whether black or white, were not immune from criticism from other criminal justice personnel. In 1910 State Attorney Herbert S. Phillips complained to George Whitfield:

A petit jury in Hillsborough County is defined as a 'city of refuge for murderers and assassins.' It is said that the only person that has been convicted of murder in the first degree in this County for years was a negro man, who was tried for raping a white woman and that if the lawyer appointed by the Court to represent him had asked the witnesses any questions or made any speech before the jury he might have been recommended to the mercy of the Court . . . I often feel that it would be a great thing for the proper administration of justice, if the jury system was abolished.⁸¹

Both the courtroom and the pardon board were places where cultural expectations, enduring social relations and institutional practices conflicted and intersected to shape the outcomes in specific ways.

Social and fraternal activities

Social activities were important to lawyers of different social strata as the lists of fraternal orders accompanying biographical sketches of these men illustrate. Fraternalism was often equated with moral order and individual self-improvement. Most Board members, judges and attorneys, raised by strong-willed Victorian parents and concerned to promote a sense of brotherhood and masculine identity, proudly listed their fraternal affiliations in biographical publications; these included the Knights of Pythias, the Independent Order of Oddfellows, Royal Arch Masons,

Woodmen of the World, the Benevolent and Protective Order of Elks, and the Ancient Arabic Order of Nobles of the Mystic Shrine. For example, Judge Horace C. Gordon is listed as a Past Chancellor Commander of the Red Cross Lodge of the Knights of Pythias. Albert Gilchrist had 'the distinction' of being the only man to simultaneously hold the offices of Governor and Grand Master Mason. W. S. Harwood estimated that in December 1896 twenty percent of the male adult population were 'oath-bound men', that the membership of fraternal orders in the United States totalled 5.4 million, and was increasing at an annual rate of 250,000-300,000. He warned: 'So numerous, so powerful, have these orders become, that these closing years of the century might well be called the Golden Age of fraternity'.⁸² A Board member or attorney might simultaneously hold membership in several such orders. Black men also created separate fraternal orders, and business leagues, and formed their own military companies, volunteer fire companies, and trade unions. African American Florida lawyer, Charles H. Alston was Supreme Deputy Grand Chancellor of Cuba, Knights of Pythias, a past attorney of the Grand Lodge of Odd Fellows and a member of the Universal Brotherhood. One attraction of these organisations lay in the benefits and services provided to members, such as support for widows and orphans, insurance premiums and funeral services. Masonic and other fraternal orders took part in the funeral ceremonies for lawyer Stephen M. Sparkman. Another attraction was the contacts which civic organisations and fraternal orders afforded politically ambitious young men.⁸³

Many younger bar members listed affiliations with Chambers of Commerce, Boards of Trade, especially in Jacksonville, Tampa and Miami, the

American Legion, college fraternities, and national, state and local bar associations. John L. Doggett was a member of the American, Florida State and Jacksonville Bar Associations. Landon's study of the Mississippi State Bar Association shows that the formation of the ABA in 1878 encouraged the establishment of state and local bar associations to stimulate support for professional reform and more efficient and uniform judicial and legal procedures across the states (of particular value to lawyers who represented clients engaged in interstate commerce on a large scale) and issues of appointative versus elective judicial offices.⁸⁴ While membership was not exclusively corporate, and general practitioners retained a strong voice, one had to have sufficient wealth and time to pay fees, attend conventions and engage in committee work, thus state bar association members tended to be drawn from a select minority of the state's lawyers; the 'best men' often identified with railroad and business interests.⁸⁵ Auerbach argues that in using the bar association as 'a lever of control over professional ethics, educational qualifications, and bar admission', these 'best men' sought to exclude ethnic practitioners.⁸⁶

Matzuko views the state bar association as a mechanism for dealing with loss of the elite's traditional influence on political life, the erosion of the status of lawyers whose position was increasingly challenged by the emergence of the corporation, the rise of scientifically-based professions such as medicine and engineering, and as part of the post-Civil War upsurge in the formation of all types of associations (professional, humanitarian and fraternal), but they were also the primary forums for public debate on issues of legal reform.⁸⁷ Small-town lawyers may have been much more sceptical towards suggestions for major

judicial and legal reforms that emanated from an elite corps of lawyers comprising members of the state bar association, but lawyers and judges rode the circuit together, while geographic and social mobility meant there was a strong sense of camaraderie among members of the Florida bar. The first president of the Florida State Bar Association established in 1887 was an ex-Confederate and a native of Hernando County, Joseph Baisden Wall. Wall fused his political, military and judicial careers - as State Senator for Hillsborough County 1886-1892, as Brigadier-General of the Florida National Guard in the 1880s, as Judge of the Hillsborough Criminal Court of Record 1893-1898, and as State Attorney then Judge of the Sixth Judicial Circuit, together with his business interests in orange growing.⁸⁸ Following his Confederate military service, Wall read law in the offices of Judge John A. Henderson, then attended law lectures at the University of Virginia, before setting up practice in Tampa in 1872. One biographical sketch asserts: 'Gen. Wall's knowledge of the law was broad and thorough, and he stood in the front rank of his profession in the state', but does not mention that he was disbarred from practising in federal courts following his involvement in a lynching in Tampa in 1882.⁸⁹

Specialisms and corporate interests

Florida's legal fraternity became increasingly bifurcated by the turn of the century with the growth of a small but influential group of urban business or corporate lawyers, and a larger group of provincial general practitioners. Most rural and small-town Florida lawyers were solo practitioners, while their urban counterparts recognised the professional advantages of partnerships, including

opportunities to specialise, increased client lists and shared costs. Partnerships were especially attractive to younger practitioners who in undeveloped areas of the state encountered resource and support problems, such as the absence of law libraries. 'Gathering information pursuant to litigation was a continuing problem, and missives of inquiry dominate the manuscript record of nineteenth-century practitioners'. Such obstacles spurred collaborative efforts between lawyers who relied on information through letters of inquiry to colleagues and out-of-state attorneys as well as law books when preparing for cases. They also learned about legal developments through the popular press, the referral system and in the courtroom.⁹⁰ Urban practitioners had greater access to office technology such as typewriters as illustrated by the form of letters addressed to the pardon board.

One feature of nineteenth-century northeastern urban legal profession often remarked upon by commentators and scholars is the emergence of the large law firm; 'law factories' with assembly-line handling of cases and staffs, and one symbol of this transformation is the corporation lawyer. Cities provided greater economic and market opportunities, which in turn generated greater income and lucrative specialisms as stratification occurred within the profession.⁹¹ Industrialization and the rise of the business corporation increased the power both of lawyers and law schools: the corporate firm lawyer and the university law teacher were the new men of power in an urban-industrial age, 'twin offspring of modernization and specialisation in an urban industrial society'. Lawyers in business corporations acted as counsellors, lobbyists and public relations men, but Gordon argues they played a secondary role in the boardroom and were not 'important strategists directing national economic enterprise'.⁹² Such

developments are not so noticeable in Florida until later in the twentieth century as many lawyers remained solo practitioners eking out an existence on the economic margins of the lower middle class. As emerging industrialisation brought new opportunities to Florida lawyers (often in urban practice) wishing to specialise, corporate specialisation usually followed years in general practice in the late nineteenth century. Florida attorneys had to supplement their income from legal practice so specialisation was not always possible, while they had to know both the law and develop a business sense and expertise in order to survive economically (Benjamin E. McLin supplemented legal work with his business interests in milling, crate manufacturing and orange cultivation).

During the 1870s some Florida lawyers were able to secure retainers from insurance, banking and railroad companies, and positions as agents or counsel to large corporations, which facilitated specialisation.⁹³ Lucien B. Wombwell was a land agent for the Pensacola and Atlantic Railroad Company during the 1880s. From the 1880s and 1890s, following the discovery of phosphate and the influx of new capital from prospectors and investors, the rapid expansion of the banking, commercial, and real estate businesses created opportunities for enterprising lawyers. In the early years of corporate law practice in Florida, railroads, individual entrepreneurs and investment bankers were the major clients whose business could be handled by smaller firms and individual lawyers. As industrial acceleration brought more frequent contact between lawyers and businessmen, so specialisms in corporate law developed. Some attorneys went on to pursue very successful careers as corporation lawyers with broad urban interests and investments in real estate, banks, and other businesses; these included Cromwell

Gibbons, whose several business operations in the early twentieth century included the Redencion Sugar Company in Cuba, of which he was president.⁹⁴ Peter Knight became Florida's leading corporation lawyer in 1921, actively associated with numerous business organisations including the Seaboard Air Line Railway and West Tampa Bank. In other words, Florida lawyers specialised to meet the needs of an expanding and diversifying economy, and specialisms developed in line with the state's distinctive economic profile.

The transformation wrought by industrialisation and corporate practice gave rise to a new conception of bar professionalism that many found distasteful:

The nineteenth-century image of the law as a learned profession, with all that it implied in personal deference and respect, social prestige, and cultural power, was a major casualty of the new regime. In its place came the image of the leading lawyer as a skilled negotiator and facilitator, the practical men of business. The new image, and the reality behind it, was not without its great compensations, of course. These came in the form of wealth and in new types of economic and political power.⁹⁵

Much of this criticism came from Populists and other agrarian radicals, but also from President Teddy Roosevelt in his Harvard Address of 1905.⁹⁶ As Ayers remarks: 'Lawyers, by all accounts key players in the transformation of the South, visible in both politics and business, did not win their power without compromise and without suffering disdain'.⁹⁷ By the early twentieth century, while lucrative corporate practice was reserved for the professional elite, criminal cases seem to have been equated with lesser educated, lower socio-economic or ethnic, and younger inexperienced lawyers. Weisberg notes that a handful of the first women lawyers were 'fearlessly' engaged in criminal work and that by the early twentieth century 'it appears that the profession was quite willing to allow women to take over this speciality'.⁹⁸ Samuel Untermeyer warned:

It is a reproach in our profession and in the community for a man practising law in the city of New York to be regarded as essentially a criminal lawyer . . . Unlike the custom of former days no man with large corporate interests to protect would think of going to a man however eminent and learned in the law, whose reputation had been achieved as a criminal lawyer.⁹⁹

This was not necessarily the case in Florida, as lawyers could achieve reputation and status by specialising in criminal law. Neil M. Allred was one Florida lawyer who made a name for himself in criminal law. As assistant State Attorney (fifth circuit) and Ocala City Attorney, he prosecuted several high profile Florida murder cases.¹⁰⁰

Florida's most famous criminal defence lawyer of the early twentieth century was William Cabot Hodges, born in Illinois in January 1875, educated at Northwestern College in Chicago, and admitted to the Florida bar in March 1896.¹⁰¹ Hodges established a general legal practice in Leon County, devoted over forty years to criminal and pardon cases, represented literally hundreds of clients at the Board of Pardons, and enjoyed a successful political career.¹⁰² Hodges was also a longstanding supporter of education in Florida as a benefactor of the Florida State College for Women and the Florida A & M College.¹⁰³ However, it was his performance as a successful criminal lawyer and pleader before the pardon board that brought him fame:

His reputation as a defense attorney in criminal cases had spread from Tallahassee across and down the state to such extent that he occupied much the same position in Florida as the late Clarence Darrow held in the middle west . . . The first impression was lasting. Attorney Hodges was shrewd . . . nothing escaped his attentive eye and ear . . . Always alert to take advantage of any situation which might develop in the court room, he was prepared to exploit that advantage to the full with a masterly command of language and forensic technique . . . In short, he was a skilled actor, orator and pleader as well as lawyer.¹⁰⁴

Hobson argues that between the 1870s and 1920s the skills of rhetoric and courtroom advocacy came to seem less important than technical competence and the skills of negotiator and facilitator,¹⁰⁵ but both sets of skills were utilised by the frock-coated advocates, epitomised by Hodges, who appeared before Florida's pardon board in the late nineteenth and early twentieth centuries. Hodges was such a regular face at pardon board meetings that the Board usually set aside time to hear his oral pleas on behalf of his incarcerated clients. As a result of this and Hodges's willingness to take on large numbers of pardon board applicants as clients at any one time, he was partly responsible for the increasing volume of pardon board applications in the first two decades of the twentieth century.

Hodges played a pivotal role in defining the documentation and arguments for clemency. Because he shared a common background, belief system and moral outlook with Board members, he knew how to frame his clients' applications in such a way that the language and arguments appealed directly to members' traditional values, notions of honour and *noblesse oblige*, religious and moral sensibilities, and racial views. That his law practice was located in Tallahassee, the centre of state government, gave him an obvious advantage in establishing professional and personal contacts with Governors and other Board members, legislators and prison officials. In many ways, Hodges appears more maverick than the emergent urban-bureaucratic legal professional and seems to have relished the challenge of promoting the interests and cases of indigent clients. For Hodges, the criminal law did not bring disdain or community reproach; quite the contrary, criminal law provided him with reputation, community and social status, political contacts and an avenue to social mobility for an ex-Yankee in a conservative

southern state.

Minority lawyers and the colour line

The legal profession did not provide the same routes to vertical mobility for female and ethnic lawyers as it did for native-born white males. Women began to enter the legal profession after the Civil War, but although a handful were admitted to law schools and to some state bars, they continued to be denied licences by state supreme courts. In 1890 there were approximately 135 women lawyers and law students in the United States (out of a total student population of 7,000), and by 1900, thirty-four states admitted women to the bar. Numerous innovative legal arguments surfaced to deny women access to the bar, such as married women's inability to contract; women's mental and physical nature rendered her unfit for legal practice; women did not possess 'legal minds' and were incapable of rational thought; and their delicate constitutions and physiology meant they could not study or stand courtroom appearances.¹⁰⁶ Women did, however, appear in courtrooms as witnesses and complainants, and possessed sufficient stamina to campaign for the release of their husbands and sons from the convict lease. Many of the first women to gain entrance to the legal profession were married to lawyers, while single women, such as Minnie Kehoe in Florida, seeking admission to the bar had practising fathers and brothers, with whom they could enter into partnerships. While western states seem to have afforded better opportunities for women lawyers than eastern states, discrimination was especially pronounced against women and African Americans in southern states.

Issues of standards and educational requirements coincided with the colour

line in southern states. Before 1863 law and custom meant that law practice was limited to white men in the South while antebellum black lawyers practised in northeastern metropolitan areas where they endured numerous obstacles such as limited opportunity for legal education and training, black exclusion from the jury box, and resistance in the black community to hiring a black attorney to plead in an all-white court.¹⁰⁷ After the Civil War black lawyers were still 'forced to define themselves by reference to the very value system that deprived them full status as men or citizens', so instruction had 'to provide more than legal training . . . it had to build racial character and confidence' as promoted by black institutions of higher learning such as Howard University Law School.¹⁰⁸ Basic legal principles were mastered in evening classes through reciting standard texts and supplemental lectures, and in order to graduate one had to pass a vigorous written examination after two years of instruction.¹⁰⁹ Alternative routes existed through clerking in offices of black practitioners, and night school. Bloomfield articulates 'the possibility that a lost generation of black civil rights lawyers, largely Howard-trained, may have flourished in the last decades of the nineteenth century',¹¹⁰ who were forced to practice in a repressive racial environment, but who 'served their community and the law far more effectively than conventional mythology suggests'.¹¹¹ Whereas, initially, they projected 'an image of modest craftsmanship' (as a tactical concession to white views) that did not appear to threaten the institutional bases of southern white hegemony, the enactment of Jim Crow legislation and the appearance of a new generation of black lawyers resulted in the abandonment of the deferential style of lawyering in favour of more assertive and confrontational tactics.¹¹²

Black attorneys, who rarely found opportunities in local banks or large business establishments (few were African American-owned), usually represented victims in personal injury suits, defended the accused in criminal cases, or litigated claims arising out of insurance policies issued by fraternal orders, where coloured lodges provided fee-generating opportunities for black practitioners. The post-1900 staples of black attorneys' work were divorces, personal injury suits, debt collections, wage claims, and suits on insurance policies, but they could also be actively involved in civil rights activities, in developing new strategies for combatting racial discrimination in transportation, criminal justice, and voting rights. A supportive clientele played an important role in the careers of black attorneys who might represent white as well as black clients.¹¹³ From 1865 it is clear that black communities across the South were using the courts to settle both individual disputes and contests for power within black institutions. Before the Civil War few southerners saw any reason to extend legal services to persons below the poverty line except where voluntarism and *noblesse oblige* demanded it in a minority of cases. Between 1865 and 1868 the Freedmen's Bureau, established by Congress as an agency of the Union Army to provide former slaves and poor whites with assistance in obtaining jobs and fair wages, food, land and education, organised its own network of civil and criminal courts throughout the South. Salaried 'solicitors' (often local bar members) were appointed by the Bureau to represent black clients in all types of cases from debt collection to criminal prosecutions, and Bureau-sponsored legal services meant that 'for the first time the poor were recognised as having a *right* to legal services, and the power of government was used to help them gain access to courts and lawyers on equal

terms with other social groups'.¹¹⁴ Thus, black attorneys in the late nineteenth century represented a clientele that had only recently gained access to the courts, but which was cognizant of its rights as citizens and of the power of the courts to effect redress for their complaints.

As members of a small professional class, black lawyers shared leadership of the black community with other minority elites: ministers, doctors, dentists, teachers, newspaper editors, and achieved high visibility by participating in all kinds of community affairs such as education, political rallies, church socials, and lodge meetings.¹¹⁵ One noted African American attorney practising in Florida was Charles Henry Alston, a native of Raleigh, North Carolina, who established a successful law practice in Tampa in 1897. Alston received his B.S. and L.L.B. degrees in 1891 and 1894 from Shaw University in North Carolina and was admitted to the Florida bar in 1894. Between 1895 and 1897 he was associated with Judge I. L. Purcell of Palatka. During his long Florida career, Alston was 'identified in more than 11,000 criminal cases', including two rape and thirty-one murder cases, and the death sentence was never executed in any of the cases he handled. Alston also successfully raised the issue of black exclusion from Florida juries. He was active in Republican party politics; he served as chairman of the county and congressional committees, as secretary of the Republican State Central Committee, and as a delegate to the Republican National Convention in Chicago in 1912.¹¹⁶

African American lawyers like Alston constituted a tiny presence in Florida. Bragaw located a handful of practising black lawyers in Pensacola before 1910. 'In three months of 1909, two of the lawyers were convicted of criminal

offenses, and one, presumably for not renewing a licence, was denied the right to practice in the city. Another, chose to leave and go to Tampa, where he became active in Florida State Republican and Progressive councils in 1912 and in asserting black demands'.¹¹⁷ As no listings for black attorneys were located in the Pensacola city directory after 1910, the black community had to rely on white attorneys for legal assistance. This was the usual position for black clients across Florida, and the overwhelming majority of black pardon applicants were represented by white attorneys, some of whom had been appointed by the court during the original trial to represent indigent black clients.

Clientele

In a predominately agricultural state such as Florida, albeit with pockets of commercial urbanisation and industrial growth by 1900, the majority of clients were private landowners rather than corporations, and single-crop farmers at subsistence level, affected by foreclosures on mortgages, tax sales, bankruptcies, theft and petty crime. Rural small-town practices handled all types of cases from assaults, defence of 'cow stealers', divorce suits and probate matters. Land title litigation, debt collection and divorces were the major sources of business for black and white practitioners.¹¹⁸ Small-town and rural attorneys were often partly paid in cash, partly in kind, while many lawyers preferred to negotiate with clients on a contingent fee basis, a practice increasingly excoriated by the American Bar Association. However, the contingent fee had a legitimate place in southern legal practice. In the context of mid-nineteenth century Texas: 'In part an institutionalising of the frontier passion for gambling, the contingent fee offered

rich premiums to the most persuasive courtroom personalities'.¹¹⁹ At the same time: 'In addition to assuring counsel for those who could not otherwise afford it, contingent fees furnished cases for lawyers who lacked social connections and law-firm ties that attracted business retainers'.¹²⁰ Given the profile of people who came before the Florida courts in criminal cases, usually black and white labouring people, migrants or sharecroppers, the contingent fee and payment in kind undoubtedly helped assure legal representation for a clientele that lacked substantial sources of wealth or regular income.

In the years after the Civil War, until its collapse in the 1930s, sharecropping emerged as 'a perfect solution for both planter and tenant. For the planter it provided a reliable labour force, while it provided a contractual system for a people usually not in possession of any real job skills'.¹²¹ African Americans predominated in the lowest categories of agricultural labour: wage hands and sharecroppers. Sharecropping was an arrangement whereby African American agricultural labourers became tenants of white landowners, worked on their own plots of land and paid the landlord either a fixed rent or a share of the crop when it was harvested. The sharecropping family household was an 'elastic unit of production' that 'remained confined to a rather narrow geographical area and "shifted" from one plantation to another without appreciable change in their material condition'.¹²² Falling crop prices within a sluggish staple-crop economy spelled economic precariousness while cycles of poverty and indebtedness engendered 'habits of "anxious locomotion"' among such groups.¹²³ Tenancy represented a decline in status for white farmers, further threatened in the late nineteenth century by economic competition with blacks, with whom they did not

wish to share a similar social status.

Like African Americans, white tenants were trapped in a cycle of illiteracy, poverty and lack of opportunity, while most owners believed they were shiftless, lazy, diseased and ignorant, and routinely dismissed them as 'poor white trash'. This group has been repeatedly characterised by contemporaries and historians as part of the 'undeserving poor'.¹²⁴ In a study of Florida's poor whites during Reconstruction, one historian argues that 'society generally preferred to ignore poor whites rather than to try to help them become more productive members of society. Instead, society used the characteristics of the diseases [tuberculosis, pellagra] to label poor whites as a class and to keep them tucked away in the swamps and backwoods'.¹²⁵ I. A. Newby prefers the term 'plain folk' for the several groups of poor white people in the New South and rejects the notion that they constituted a 'class'; he characterises them as 'a largely agricultural people with no sense of unity or common condition, and their social and political purposes were conservative rather than radical'.¹²⁶ What bothered middle class reformers most was the refusal of poor whites to live according to conventional morality. The economic marginality of poor whites translated into social and cultural isolation that enhanced popular stereotypes of degeneracy and social disintegration, and the notion of a 'category of people set apart from everyone else by a plethora of undesirable qualities that added up to depravity and degeneracy'.¹²⁷ Middle class reformers in Alabama, for example, attempted to change poor white familial structures through compulsory education laws, and laws prohibiting child labour. Such actions caused resentment and were premised on fundamental misunderstandings about poor white culture.¹²⁸

In Florida, the paradox of a highly mobile white male middle class group that was intensely vexed by highly mobile lower class men and women is most acutely underlined in attitudes toward poor whites and black labourers in the burgeoning turpentine, lumber and phosphate industries. There were four main naval stores products: tar and pitch, manufactured by burning dead pine wood, and turpentine and rosin, extracted from the gum of living trees. Operations might range from one to six crops with each crop consisting of 10,000 trees. Large operators such as Wade H. Leonard in Calhoun County controlled over 50,000 acres along the Apalachicola river.¹²⁹ Turpentine work was seasonal; most activity took place between March and November when the 'chippers' carved V-shaped gashes in pine trees and installed metal gutters and clay cups to catch the gum. Gum was dipped out and poured into barrels, loaded onto mule-drawn wagons and transported to a turpentine still where the distilling took place.¹³⁰

Numerous communities were established around turpentine stills in sparsely-settled interior counties while towns like Pierce and Brewster were brought into existence by phosphate companies. Turpentine workers and their families, who were often African American, lived in company shanties in stockades surrounded by miles of pine forests, in close proximity to camp managers and guards, usually received company scrip or metal tokens as wages (graded according to skill, age and gender), and bought provisions at inflated prices on credit from the company store or commissary.¹³¹ Women living in the stockades performed child-rearing duties, boiled gum-stiff clothing, cooked and nursed the sick.¹³² Men and women were prohibited from leaving the camp because of the debts they owed to camp captains and other personnel. Barbed

wire surrounded the camps such as the Blue Creek camp in Dixie County operated by the Putnam Lumber Company, where the perimeter was regularly patrolled and hands were locked into their shanties after supper. Whipping was widely used, and under the eighteen-year management of 'Captain' W. Alston Brown, workers were forced to participate in weekend gambling and prostitution rackets run by Brown that served to increase their indebtedness.¹³³ The system did force a sort of quasi-paternalism as the owner had to provide rudimentary 'womb to tomb' services (housing, medical treatment, transportation, food, and burial plots) for workers, and constituted a continuation of plantation-system relationships.¹³⁴

Naval stores production provided employment for African Americans leaving the plantation system during Reconstruction, and continued a tradition of black labour that dated back to the colonial period. Such work was often regarded as too severe and too badly paid for white workers. 'The negro of the pineries is careless, often brutal, always happy-go-lucky, but the men who employ him say that he works well with right management; in fact, is the best labour that can be had for the place, and that the business would not know what to do without him'.¹³⁵ While many workers remained in the camps where they were born and worked for the same owners as their parents and grandparents, there was much shifting between camps as turpentine operators sought good, trained labour and because gum trees had a life-span of six to eight years.¹³⁶

Over the years turpentine workers created a distinct culture with its own rhythms of labour and language. One woods rider recalled:

Turpentine niggers are a class by themselves. They are different from town niggers, farm laborers, or any other kind. Mostly they are born and raised in the camps, and don't know much about anything else. They seldom go to town, and few of them ever saw

the inside of a schoolhouse. In nearly every camp there is a jack-leg preacher who also works in the woods, and they have church services at one or another of their houses. Every camp has its jook, as they are now called, but the original name of this kind of joint was "tunk." This is a house where the men and women gather on Saturday nights to dance, drink moonshine, gamble, and fight. Between dances and drinks, young couples stroll off into the woods to make love.¹³⁷

All single men and women got 'married' at a 'commissary wedding' which involved no ceremony other than a visit to the commissary where they were assigned a house and an account for clothing.¹³⁸ Lichtenstein argues that one of the results of convict leasing in the coal and iron industries of Georgia, Alabama and Tennessee was 'state-sponsored forced proletarianization'. Long-term convict labourers constituted the core of a new industrial working class whose emergent industrial skills superseded older agrarian work habits, and who found employment as free miners after their release.¹³⁹ It is not clear whether a similar pattern can be discerned in Florida's phosphate and turpentine industries.

Violence was depicted as a regular feature of life in a turpentine settlement and black reaction was reported in stereotypical terms: 'There fights start, and eventually end in shooting or cutting scrape, in which one or more persons are killed. The murderer is always allowed to escape by the negroes, and it is only occasionally that they are afterward arrested'.¹⁴⁰ Florida's white middle class was suspicious of rural lower class black and white populations which did not conform to traditional standards of behaviour and conduct, but were especially hostile toward urban African Americans. Early twentieth century popular connections between hereditary and environmental factors in assessing the causes of crime focused on urban black populations as sources of disorder: 'The criminal side of the Negro is a matter of very serious thought. The great men of the race

spend hours chasing the phantasy [sic] of equal rights while the element of the race which figures in police and other courts by their conduct, destroy the good accomplished by the intelligent and progressive element'.¹⁴¹ Jacksonville's black population provided much cause for concern in debates over Florida crime rates, especially as the city developed in the years after the fire of 1901 as two distinct entities, 'a relatively affluent white Jacksonville and a relatively poor black Jacksonville', that were much more pronounced than in the late nineteenth century.¹⁴²

In the late nineteenth and early twentieth centuries, black Floridians developed communities in the state's growing urban centres of Pensacola, Tampa, Jacksonville and Miami. La Villa was an independent predominately black community that lost its political autonomy when it was annexed to Jacksonville during the city's political expansion in the late 1880s.¹⁴³ By 1910, forty-two percent of Miami's 5,000 inhabitants were African American, confined to the northwest quarter known as 'Colored Town'.¹⁴⁴ As a city with a strong economic and social base established by a small but seemingly robust black middle class and a large growing labouring class in 1880-1900, Booker T. Washington in 1907 viewed Pensacola and the economic progress of its black residents since the Civil War as 'representative of that healthy progressive communal spirit, so necessary to our people'.¹⁴⁵ Half of the black residents owned their own homes and significant business property. 'That the Tuskegee orientation should exist among Pensacola blacks was a result of both its proximity and the presence of an important segment of Tuskegee graduates in the professional, craftsmen, and proprietorial ranks. On the occasion of Booker T.

Washington's visit to Pensacola in 1912, he was entertained by the Tuskegee alumni, numbering at that time fifty persons'.¹⁴⁶ However, Donald Bragaw argues that prospects for continued black economic and social mobility in Pensacola were dashed after 1906 because of the national economic upheaval following the panic of 1907, the subsequent recession (the result of United States' industrial overproduction, an inadequate banking system and stock market speculation), and the declining lumber industry as the port city was the major exporter of yellow pine before World War I, and the closure of the naval base. Bragaw contends that the economic decline resulting from the depression of 1906 and subsequent economic upheavals at the national level disproportionately affected black citizens at the local level in Pensacola,¹⁴⁷ and the gap between the black middle and lower classes appears to have become more marked.

Similar changes were occurring in different parts of Florida over a much longer period of time. David Sowell's study of racial employment patterns in Gainesville during the last third of the nineteenth century reveals that African Americans experienced marked occupational changes as agricultural-related employment declined slowly and the white-dominated professional, managerial and clerical sector experienced marked growth.¹⁴⁸ Occupational segregation seems to have become more conspicuous by 1900 as 'jobs which involved considerable manual or menial labor were "black jobs." The only professional posts in which large numbers of blacks participated were preaching and teaching activities which dealt primarily with the black community'.¹⁴⁹ While most black male occupational mobility was restricted to shifts from unskilled to skilled labourer, and black social mobility in general was limited, the former was sufficient to

persuade many white Floridians of the need for legal restrictions and 'Jim Crow' legislation.¹⁵⁰

African Americans comprised the fifth major ethnic group in Tampa, accounting for twenty percent of the population by 1900, as rural black southerners began moving to the city in significant numbers after Reconstruction. A 'New Comer' to the city in 1902 wrote to the *Tampa Morning Tribune*:

The writer has never seen, anywhere, as many idle, able-bodied negroes as may be found about this city. The recent efforts to enforce the vagrancy laws were applied to white strangers found here during the days the street show was in the city. No doubt they were vagrants and should have been arrested. But what of the negro idlers always here? . . . I am told that certain of these negroes work part of the time when there are boats discharging at the docks or extra cars to be loaded . . . Those who so work get high wages by the hour and so loaf away the time when they are not so engaged.¹⁵¹

Deteriorating racial and ethnic relations had already been severely strained following the arrival of black troops in Tampa, a major disembarkation point for U.S. military forces during the Spanish-American War. Non-southern black troops refused to defer to white southern prejudices and custom while whites continued to complain about black behaviour. On the eve of the army's departure to Cuba, Tampa suffered a race riot on the night of 6 June 1898, 'the most serious racial clash that occurred in a military encampment' during this war.¹⁵² The preponderance of Democratic attorneys involved in the governance of Florida and the conservatism of the majority of white voters did not encourage broad-minded solutions to social and political issues.

Protecting the weak and innocent was ostensibly a major function of the criminal justice system. At the same time, for Florida's criminal justice system to maintain its credibility and effectiveness, the illusion of equal justice for rich

and poor, male and female, black and white, native-born and foreign-born, required the majority of the public to believe that the law was impartial. Pardon board members constituted a cadre of righteous, indignant, compassionate and honourable men, who acted in the interests of the community, but were fully conscious of their duties toward fellow members of the propertied classes and established order. Board members, in keeping with their professional position and bourgeois self-image, were concerned to impose their own codes of morals and good manners, language, customs and social amusement on social inferiors without upsetting the racial and gender hierarchies implicit in a segregated society with its own distinct racial caste system. In the context of a 'civilizing process', such codes of manners and morals gradually become stricter and expectations of others' conduct increase, thus manners become a means of distinguishing oneself from social inferiors.¹⁵³ Segregation and discrimination were very much part of the 'civilizing process' of the late nineteenth and early twentieth-century American South.

For Norbert Elias the 'civilizing process' refers to specific but unplanned (yet conscious) changes in human conduct and sentiment, that are linked to underlying changes to the social and political order, such as increased capital formation and the organisation of the 'absolutist state'.¹⁵⁴ It also refers to 'a specific transformation of human behaviour' whereby in a long-term process of change, behaviour is gradually altered and refined by pre-emptory and continuously evolving cultural norms. New standards of conduct, morals and manners emerge, and are diffused gradually from one social group, usually the upper or middle class to another, usually the lower class. As a result, 'social

status and class distinction come increasingly to depend upon cultural achievement, language, and manners', and serve to differentiate the different classes from social inferiors who are increasingly despised for their lack of culture and civilisation.¹⁵⁵ Included in these changes in human behaviour is a growing sensitivity towards violence and an unwillingness to tolerate its use in everyday public life.¹⁵⁶ Such changes in human behaviour accompanied the social, economic and political transformations taking place in Florida in the period of this study, and attend the evolution of an emergent bourgeois-professional political order from a soldier-politician oriented political elite, the growing racial and class divides, and the variegated economic changes occurring in various rural and urban communities in Florida. The extension of charity to prisoners and their supporters was also part of the more general movement in sensibilities as long as this did not clash with 'the objectives of enhanced control or secure confinement'.¹⁵⁷

1. J. S. Blich, "Florida's Prison System Today and Yesterday," (New York: Russell Sage Foundation, c1922).

2. T. Earl Sullinger, "Popular Attitudes Toward the Administration of Criminal Justice," *Journal of the American Institute of Criminal Law and Criminology* 11 (1920-1921): 506.

3. For example, Charles B. Parkhill's first wife was Genevieve Perry, daughter of Governor Edward A. Perry, while his second wife was Helen Wall, daughter of Judge Joseph B. Wall of Tampa. In May 1871 future governor Francis P. Fleming married Floride Lydia Pearson, youngest daughter of Bird M. Pearson, Justice of the Supreme Court of Florida. William S. Jennings's second wife, May Mann Jennings, was daughter of Florida Senator Austin S. Mann. See Karl H. Grismer, *Tampa: A History of the City of Tampa and the Tampa Bay Region of Florida*, (St. Petersburg, F.L.: The St. Petersburg Printing Company, 1950), pp. 391.

4. Colburn and Scher, p. 37.

5. Ibid., pp. 26, 117, 184.

6. Ibid., p. 57.

7. Ayers, *The Promise of the New South*, pp. 34-35.
8. Colburn and Scher, p. 127.
9. Ayers, *The Promise of the New South*, p. 36.
10. McGovern, *Anatomy of a Lynching*, p. 33.
11. Peter N. Stearns, "Men, boys and anger in American society, 1860-1940," in J. A. Mangan and James Walvin, eds., *Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940*, (Manchester: Manchester University Press, 1987), pp. 80-86.
12. The Florida Historical Society, *Makers of America*, vol. I, (Atlanta, G.A.: A. B. Caldwell, 1911), p. 147.
13. Gannon, pp. 39, 74; Tebeau, p. 197; Colburn and Scher, p. 14.
14. Wayne Flynt, *Poor But Proud: Alabama's Poor Whites*, (Tuscaloosa and London: The University of Alabama Press, 1989), p. 29.
15. Le Roy Ashby, *William Jennings Bryan: Champion of Democracy*, (Boston: Twayne Publishers, 1987), pp. 2-4.
16. Ibid., pp. 7, 14.
17. See Bertram Wyatt-Brown, *Southern Honour: Ethics and Behaviour in the Old South*, (Oxford: Oxford University Press, 1982); Ayers, *Vengeance and Justice*, Chapter 1.
18. Ayers, *Vengeance and Justice*, p. 13.
19. Julian Pitt-Rivers, "Honour" in David L. Sills, ed., *International Encyclopedia of the Social Sciences*, vol. 5 & 6, (London: Crowell Collier and Macmillan, Inc., 1972), pp. 503-504, 507; and J. G. Persistiany and Julian Pitt-Rivers, *Honour and Grace in Anthropology*, (Cambridge: Cambridge University Press, 1992), p. 5.
20. OC 3: 2.
21. D. Lang to Messrs. Blount, Blount, & Carter, 8 May 1908, IC Box 1/ Folder 2; Minutes A: 64.
22. House Journal, 1911, pp. 38-39.
23. J. H. Reese, *Lands of Leon: A Supplement to the Weekly True Democrat*, 15 December 1911, (Tallahassee, F.L.: Milton A. Smith, 1911), p. 66; Allen Morris, comp., *The Florida Handbook*, (6th. edn. Tallahassee, F.L.: The Peninsular Publishing Company, 1957), pp. 159-160; Harry Gardiner Cutler, *History of Florida, Past and Present*, vol. I, (Chicago and New York: The Lewis Publishing Company, 1923), pp. 179-180.

24. David J. Rothman, *Politics and Power: The United States Senate, 1869-1901*, (Cambridge, Mass: Harvard University Press, 1966) p. 137. By the 1890s, seventy-nine percent of all attorneys elected to the United States' Senate had previous political experience.

25. Ibid., pp. 115, 124.

26. Samuel Proctor, *Napoleon Bonaparte Broward: Florida's Fighting Democrat*, (Gainesville, F.L.: University Press of Florida, 1993), pp. 308-309.

27. Samuel Proctor, "Napoleon B. Broward: The Years to the Governorship," *Florida Historical Quarterly* 26 (July 1947): 122-130.

28. Ayers, *Promise of the New South*, pp. 411-413.

29. Broward also served as one of five Jacksonville police commissioners in 1897 until that body was abolished in 1899. See Oscar O. McCollum, compiler, *History of the Charter of Jacksonville*, (Bound photocopy, Florida State Library, c1951), pp. 15-16.

30. Maxwell Bloomfield, *American Lawyers in a Changing Society, 1776-1876*, (Cambridge, Mass.: Harvard University Press, 1976), p. 281.

31. See W. Hamilton Bryson and E. Lee Shepard, "The Virginia Bar, 1870-1900," in Gerard W. Gawalt, ed., *The New High Priests: Lawyers in Post-Civil War America*, (Westport, C.N. and London: Greenwood Press, 1984), p. 172.

32. Joseph H. Reese, *Florida Flashlights*, (Miami, F.L.: The Hefty Press, 1917), p. 79.

33. *Biographical Souvenir of the States of Georgia and Florida*, pp. 545-546.

34. Dzialynski was born in Germany in 1841, then the family emigrated to the United States in 1853, spending three months in New York (during which time his mother died) then the father and children moved to Jacksonville (where the father and two brothers died of yellow fever in 1857). Dzialynski served as Municipal Judge of Jacksonville from 1895 to 1907. See Rerick II, p. 520; Wanton S. Webb, *Webb's Historical, Industrial and Biographical Florida*, Part 1, (New York: W. S. Webb & Co., 1885), pp. 141-142; FTU 16 May 1907 cutting in biographical file, Florida State Library.

35. Robert Wiebe, *The Search for Order*, (London: Macmillan, 1967), p. 117.

36. *Florida Law Journal* XXIII (April 1949): 133-137.

37. Ibid., pp. 136-137.

38. Fred L. Robertson, comp., *Soldiers of Florida in the Seminole Indian-Civil and Spanish-American Wars*, (Live Oak, F.L.: Democrat Book and Job Print, c1903), pp. 335-336; Harry Gardiner Cutler, *History of Florida, Past and Present*, vol. I,

(Chicago and New York: The Lewis Publishing Company, 1923), p. 144; FTU 14 December 1917, p. 10; C. A. Rohrabacher, *Live Towns and Progressive Men of Florida*, (Jacksonville, F.L.: Times-Union Printing and Publishing House, 1887), pp. 181-182; J. B. Whitfield, *An Official Directory of the State Government*, (Tallahassee, F.L.: Floridian Steam Book and Job Office, 1885), pp. 82; Robert Hawk, *Florida's Army Militia/ State Troops/ National Guard, 1565-1985*, (Englewood, F.L.: Pineapple Press, Inc., 1986), p. 102; Bertram H. Groene, "Civil War Letters of Colonel David Lang," *Florida Historical Quarterly* 54 (1976): 341.

39. *Bench and Bar of Florida: A Pictorial and Biographical Directory of the Members of the Bench and Bar of Florida*, vol. 1, (Tallahassee, F.L.: Horace Evans, 1935), p. 139; Reese, *Florida Flashlights*, p. 114; *Florida Law Journal* XIII (1939): 155.

40. June 1891 saw the unveiling in Pensacola of a monument to Florida's Confederate dead, a project begun by Governor Perry in the early 1880s. See Cutler I, p. 166. For a recent exploration of southerners' celebration and memorialisation of the Confederacy, see Gaines M. Foster, *Ghosts of the Confederacy: Defeat, the Lost Cause, and the Emergence of the New South, 1865-1913*, (New York: Oxford University Press, 1987).

41. Cutler III, pp. 58-59, 319; Cash III, pp. 12-13, 15-16; Cash IV, pp. 455-456; George M. Chapin, *Florida 1513-1913: Past, Present and Future*, vol. II, (Chicago: The S. J. Clarke Publishing Company, 1914), pp. 152-153; Rerick I, pp. 425-426, 621; Pleasant Daniel Gold, *History of Duval County, Florida*, (St. Augustine, F.L.: The Record Company, 1928), pp. 356-357, 624; H. Clay Armstrong, ed., *History of Escambia County, Florida*, (St. Augustine, F.L.: The Record Company Printers, 1930), pp. 228-230; *Florida Bar Journal* 27 (July 1953): 343; The National Cyclopedic of American Biography, vol. 46 (New York: James T. White & Company, 1947), pp. 500-501.

42. Cutler II, pp. 160-161; Cutler III, p. 342; Reese, *Florida Flashlights*, p. 97; *Bench and Bar* I, p. 146; *Florida Law Journal* XXIII (1949): 25; Homer E. Moyer, ed., *Who's Who and What to See in Florida: A Standard Bibliographical Reference Book of Florida*, (St. Petersburg, F.L.: Current Historical Company of Florida, Inc., 1935), pp. 286-287.

43. Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America*, (New York: Oxford University Press, 1976), p. 16.

44. *Ibid.*, pp. 15-18. Most antebellum southern lawyers learned their craft from Blackstone whose *Commentaries on the Laws of England* first appeared in America in 1771-1772 and clerking was an acceptable form of training into the twentieth century. See Rothman, *Politics and Power*, p. 118; Ayers, *Vengeance and Justice*, p. 54.

45. Ayers, *Promise of the New South*, p. 63.

46. Chief Justice James B. Whitfield was a native of North Carolina, Justice Shackelford (Tennessee), Justice Cockerell (Alabama), Justice Taylor (South Carolina), and Justice Hocker (Virginia). See J. H. Reese, *Lands of Leon*, p. 11.

47. Gawalt, pp. 105-106, 106n27. Gawalt did not find evidence to substantiate the claims of Friedman and Nash that 'the rise of the law schools was linked to a social change in the character of the bar - from strongly aristocratic to middle-class in family background'. Rather, the majority of lawyers were still the sons of professional and businessmen. See Lawrence M. Friedman, *A History of American Law* (New York, 1973), p. 526 and Gary B. Nash, "The Philadelphia Bench and Bar, 1800-1861," *Comparative Studies in Society and History* 3 (1965): 203, 207-208.

48. Cutler II, p. 224; Ethan V. Blackman, *Miami and Dade County, Florida: Its Settlement, Progress and Achievement*, (Washington, D.C.: Victor Rainbolt, 1921), pp. 139-140; Reese, *Florida Flashlights*, p. 115; Ernest L. Robinson, *History of Hillsborough County, Florida*, (St. Augustine, F.L.: The Record Company Press, 1928), pp. 256-257; Grismer, p. 361.

49. Rerick II, pp. 609-610.

50. Bloomfield, *American Lawyers*, p. 278.

51. Paul S. George, "The Evolution of Miami and Dade County's Judiciary, 1896-1930," *Tequesta* 36 (1976): 30, 33.

52. Rerick I, p. 512; Gold, p. 296; Chapin, pp. 689-690; S. Paul Brown, *The Book of Jacksonville: A History*, (Poughkeepsie, N.Y.: A. V. Haight, 1895), p. 152.

53. Cutler II, pp. 75-76; Cutler III, p. 85; Rerick II, pp. 749-750; James W. Covington, *The Story of Southwestern Florida: Family and Personal History*, (New York: Lewis Historical Publishing Company, 1957), pp. 214-215. Wells's father was a prosperous orange grower and Plant City merchant.

54. Cash III, pp. 12-13; Gold, p. 624; *Florida Bar Journal* XXVII (July 1953): 343; Reese, *Florida Flashlights*, p. 103; NCAB 46, pp. 500-501; D. D. Moore *et al*, *Men of the South*, (New Orleans, L.A.: Southern Biographical Association, 1922), p. 189; *Makers of America* 4, p. 211.

55. Stevens, p. 21. Formal law school education, a predominately urban phenomenon, underwent tremendous growth in the last third of the nineteenth century, with the endowing of private universities such as Harvard and Columbia, the founding of Morrill-land grant colleges, the emergence of a new proprietary professional school in the 1880s, and the dramatic expansion of part-time law schools such as Georgetown. The latter were embraced by a new group of students who viewed law school as a 'gateway to a professional career with the attendant prospects of social advancement and economic improvement, rather than primarily an educational experience'.

A further variety of alternatives such as correspondence courses meant it

was increasingly possible for white and black males of all socio-economic groups to qualify for the legal profession. The 1890s saw the growth of Young Mens' Christian Association sponsored law schools while two-thirds of law night schools were established after 1895 to provide inexpensive education to young urban men in full-time jobs who wished to study law in order to pursue a career in business or politics. These schools employed part-time instructors, the older lecture method rather than the 'scientific' case method, had inadequate library facilities, and students who were often too weary to concentrate on their studies, thus were deficient by the standards of elite university law schools, yet they were an important mechanism for ensuring some ethnic heterogeneity in the legal profession. By the 1890s Harvard had become the preeminent law school (displacing Columbia 1850s-1870s) yet the bulk of legal education was conducted in marginal proprietary or state institutions rather than elite institutions. See Stevens, pp. xv, 35-37, 51, 75; Auerbach, p. 98.

The 'case method', introduced to the study of law by Dean Christopher C. Langdell of Harvard Law School in the 1870s, was based on Langdell's belief that the 'science' of law was best discovered through analysis of appellate court opinions and was beyond the comprehension or control of laymen. 'Langdell's approach to legal studies was based on his insight that in order to best serve their corporate and nationally-oriented clients, lawyers had to be more skilled in the process of legal thinking and in brief preparation than in the technical vocational skills that were invaluable to the solo practitioner'. While the case method was adopted, common law subjects remained at the heart of the curriculum. Most law schools still used the lecture-and-text system or a modified version of the case method to prepare students for the local bar examination. See Gawalt, p. 109; Bloomfield, *American Lawyers*, p. 347; Gordon, p. 74.

56. Ibid., p. 95.

57. Chapin, pp. 656-659; Cutler III, pp. 160-162; *Florida Law Journal* XI (1937): 17; Moyer, pp. 99-100; Reese, *Florida Flashlights*, p. 102; Reese, *Lands of Leon*, p. 45; NCAB 41, pp. 202-203; Rerick I, pp. 413-414, 421-422; Rerick II, pp. 611-612.

58. Stevens argues that calls for structured legal education in the last third of the nineteenth century came from eastern lawyers who saw themselves as setting national standards, and from southern and western professionals who did not wish to be left behind. See Stevens, pp. 24-25.

59. Auerbach, p. 29.

60. *Bench and Bar*, p. 115; Cash IV, pp. 455-456; Moyer, p. 117.

61. Moyer, pp. 286-287; Rerick II, p. 653; *Makers of America* 3, pp. 232-234; *Florida Law Journal* XXIII (1949): 25.

62. John A. Matzuko, "The Best Men of the Bar": The Founding of the American Bar Association," in Gawalt, ed., p. 77; Stevens, p. 99.

63. Auerbach, p. 94.

64. Stevens, p. 99. In 1928 Florida was one of nine jurisdictions that still did not have any formal requirements for law training. The debate over educational standards also focused on the diploma privilege, 'which gave legislative approval to individual law schools to determine the quality of students needed to pass the bar'. It came under ABA attack in 1892, and the system went into decline. Florida was one state which retained the diploma privilege into the 1940s and 1950s. See Stevens, pp. 98, 182n27, 217n9.

65. Auerbach, p. 97

66. Matzuko, p. 88.

67. Bloomfield, *American Lawyers*, p. 274.

68. Bryson and Shepard, pp. 171-172. Virginia set its first written bar examination in 1897. Between 1870 and 1920 formal legal education as an undergraduate curriculum increased nationally from one to two to three years. In 1896 the American Bar Association approved the requirement of a high school diploma and two years of law study for bar admission (extended to three years in 1897), but only one percent of lawyers were ABA members and state legislatures were not persuaded to act. See Stevens, pp. 95-97. Telephone enquiries to the Florida Bar and Florida Board of Bar Examiners yielded no information as to when a written bar examination was introduced by the legislature, or details on the method of admitting candidates before the written examination requirement.

69. Geison, pp. 9-10.

70. Kermit L. Hall, "Constitutional Machinery and Judicial Professionalism: The Careers of Midwestern State Appellate Court Judges, 1861-1899," in Gawalt, ed., p. 40.

71. Botein, p. 53.

72. Hall, "Constitutional Machinery," pp. 29-31. Between 1846 and 1912 Hall demonstrates that the method of selecting state appellate judges changed rapidly and dramatically as constitutional conventions in new states adopted popular election of judges. Lawyer-delegates controlled the judiciary committees at such conventions, thus 'popular election was a lawyer's reform' to stimulate public confidence, but came under attack by the end of the nineteenth century as lawyers in newly organised American bar became concerned with standards and equality issues.

73. NCAB 41, pp. 202-203; *Florida Law Journal* XI (1937): 17, biographical file, Florida State Library.

74. Botein, pp. 49-50.

75. Mary Frances Berry, "Judging Morality: Sexual Behavior and Legal Consequences in the Late Nineteenth-Century South," *Journal of American History* 78 (December 1991): 838.
76. Ibid., p. 837.
77. FTU 27 May 1891, p. 5.
78. Friedman, p. 243; Skillman, vol. 4, p. 3804.
79. Ibid., p. 248.
80. See Edward N. Akin, "When a Minority Becomes the Majority: Blacks in Jacksonville Politics, 1887-1907," *Florida Historical Quarterly* 52 (October 1974): 123-145.
81. H. S. Phillips to Hon. G. T. Whitfield, 13 August 1910, ACF 179/1477.
82. W. S. Harwood, "Secret Societies in America," *North American Review* 164 (May 1897): 617-624.
83. Colburn and Scher, p. 43.
84. Michael L. Landon, "Another False Start: Mississippi's Second State Bar Association, 1886-1892," in Gawalt, ed., p. 189.
85. Matzuko, p. 78.
86. Auerbach, p. 64.
87. Matzuko, p. 79.
88. NCAB 6, p. 147; Rerick II, pp. 740-741; Rohrabacher, p. 200; Grismer, p. 331; biographical file, Florida State Library.
89. NCAB, 6, p. 147. In March 1882 Wall had been named as a leading participant in the lynching of Charles D. Owens, a thirty-year old white transient accused of assaulting a white female. This prompted Judge James W. Locke of the United States' Court for the Southern District of Florida to denounce the illegality and immorality of lynch law and to formally issue an order prohibiting Wall from practising as an attorney before the federal court. No criminal proceedings were brought against General Wall for his actions in Hillsborough County, even though the circuit court was in session at the time of the lynching and had in fact adjourned for lunch and returned to find Owens' corpse dangling from a tree outside the courtroom. Wall appealed his disbarment all the way to the U.S. Supreme Court and in a split decision of April 1883 the court upheld Judge Locke's jurisdiction to bar a lawyer who was not first indicted or convicted of a crime. This episode did not however hinder Wall's subsequent political or judicial career, or damage his public reputation. See Robert P. Ingalls, "General Joseph B. Wall and Lynch Law in Tampa," *Florida Historical Quarterly* 63 (July 1984): 51-

70.

90. Bakken, p. 134.

91. Robert Gordon, "Legal Thought and Legal Practice in the Age of American Enterprise," in Gawalt, ed., p. 75; Hobson, pp. 5-6. The 'Cravath system' of hiring high-ranking young male graduates from elite law schools with no prior experience as salaried associates transformed urban corporate law firms in 1890s and 1900s. The 1890s development of the large law firm of five or more partners and associates and later the 'law factory' of up to twelve partners and associates was an urban phenomenon closely linked to business-industrial transformation and expansion.

92. Stevens, p. 98; Gordon, p. 78.

93. Bryson and Shepard, p. 174.

94. *Makers of America* III, pp. 232-234.

95. Hobson, p. 9.

96. Auerbach, p. 33n47.

97. Ayers, *Promise of the New South*, p. 66.

98. D. Kelly Weisberg, "Barred From the Bar: Women And Legal Education in the United States, 1870-1890," *Journal of Legal Education* 28 (1977): 496-497.

99. Samuel Untermeyer to William Armstrong, 24 December 1909, quoted in Auerbach, p. 26n25.

100. Rerick I, pp. 413-414. Allred completed his common school education in Marion County, two years study at the Florida Agricultural College, and a business course at Smith's College in Lexington, Kentucky. He studied law under the tutelage of H. L. Anderson in Ocala in 1892, completed his professional studies at Washington and Lee University in 1895, continued legal studies in the offices of Judge Hocker and was finally admitted to the Florida bar in 1896.

101. Reese, *Lands of Leon*, p. 92; *Florida Law Journal* XIV (January 1940): 225; *The Daily Democrat*, Tallahassee, 17 January 1940, p. 4; *Tallahassee Democrat*, 19 January 1940, pp. 1, 10; *Florida State News*, 18 January 1940, p. 1; *Florida DCT Journal*, February 1947, p. 3.

102. Hodges served as State Senator for Leon County for twenty years (elected for five consecutive four-year terms, four times without opposition), was 24th president of the state senate in 1935, and ran for governor twice (in 1912 on the Bull Moose ticket and in 1936). One obituary states: 'William C. Hodges came to Tallahassee under the political handicap that he was not a native of the state or even of the south . . . His early years served to increase rather than to decrease

this natural barrier in that his course at first ran counter to that of the majority of his fellow citizens . . . That he overcame such a handicap and carved for himself an invulnerable position as permanent senator from this district is a testimonial to the strength of will, courage and ability which carried him, four years ago, almost to the governor's mansion'. See *Daily Democrat*, Tallahassee, 17 January 1940, p. 4.

103. Florida, Manuscript Collections, *Hodges, William Cabot (1875-1940)*, 1 box, M89-034. In a Baccalaureate Address on Educated Womanhood which he gave to the Florida State College for Women at Tallahassee on 3 August 1934, Hodges asserted: 'The highest paid product of social evolution is the growth of such a civilized home as only a good, cultivated and educated woman can make. The function of higher education is to furnish such women . . . A wise and womanly woman wields tremendous influence for good in the community in which she makes her home. Men are not made and unmade by forms of government. It is the character and influence of mothers and wives. The influence of a highly educated woman means more to the future of government than all conceivable present day legislative reforms'.

104. *The Daily Democrat*, 17 January 1940, pp. 1, 10; *Florida State News*, 18 January 1940, p. 10. As a criminal law defence attorney: 'He rapidly won a reputation as one of the most brilliant and successful pleaders ever to appear before the State Pardon Board, and - remarkable as this may seem - high school boys and girls in Tallahassee would skip school to spend hours in a courtroom listening to the eloquent pleading of this strange young actor-altruist with the frame of an Indian, the face of a Byron, the brain of a Voltaire, and the kindly, compassionate heart of a Lincoln'.

105. Hobson, p. 3.

106. Weisberg, pp. 486n7, 487-492.

107. Maxwell Bloomfield, "John Mercer Langston and the Training of Black Lawyers," in Bloomfield, *American Lawyers*, p. 312; Hurst, p. 255.

108. Bloomfield, 1976, pp. 303, 328. Howard opened in January 1869, 'to encourage the educational aspirations of freedmen' and to provide training for black ministers and teachers to serve black communities across the late-nineteenth century South. John Mercer Langston became Dean of Howard Law School, vice-president and acting president of Howard University 1873-1875.

109. Bloomfield, *American Lawyers*, pp. 329-331.

110. *Ibid.*, pp. 337-338; Stevens, pp. 81n68. Many were located in government agencies as clerks, practising lawyers, and other professions of teaching and medicine. Census figures show there were 431 black lawyers in the United States in 1890 and 728 by 1900.

111. Maxwell Bloomfield, "From Deference to Confrontation: The Early Black Lawyers of Galveston, Texas, 1895-1920," in Gawalt, ed., p. 152.
112. Ibid., p. 161.
113. Ibid., pp. 155-156, 158, 162.
114. Bloomfield, *American Lawyers*, pp. 342, 346.
115. Ayers, *Promise of the New South*, p. 71.
116. Burkett, Randall K., Nancy Hall Burkett, and Henry Louis Gates, Jr., *Black Biography 1790-1950: A Cumulative Index*, Volume 1: A-J, (Alexandria, V.A.: Chadwyck-Healey, Inc., 1991), 1666-p. xxvi. Alston was County Supervisor of Negro Schools for Hillsborough County, vice-president of the Florida Negro Business League and owned stock in several Florida corporations.
117. Bragaw, p. 290.
118. Landon, p. 193; Bakken, p. 135.
119. Bloomfield, *American Lawyers*, p. 279.
120. Auerbach, p. 48.
121. Wayne Flynt, *Poor But Proud: Alabama's Poor Whites*, (Tuscaloosa, A.L. and London: The University of Alabama Press, 1989), p. 64.
122. Jacquelyn Jones, "The Political Economy of Sharecropping Families: Blacks and Poor Whites in The Rural South, 1865-1915," in Carol Bleser, ed., *In Joy and In Sorrow: Women, Family, and Marriage in the Victorian South, 1830-1900*, (New York and Oxford: Oxford University Press, 1991), pp. 198, 200.
123. Ibid., p. 199.
124. Flynt, *Poor But Proud*, p. 90; I. A. Newby, *Plain Folk in the New South: Social Change and Cultural Persistence, 1880-1915*, (Baton Rouge and London: Louisiana State University Press, 1989), p. 12.
125. Jessica Libbie Slavin, "Crackers and Clay Eaters: The Poor Whites of Reconstruction Florida," M. A. thesis, Florida State University, 1991, p. 40.
126. Newby, p. 5.
127. Ibid., pp. 10, 12.
128. Flynt, *Poor But Proud*, p. 197.
129. Clifton Paisley, "Wade Leonard, Florida Naval Stores Operator," *Florida Historical Quarterly* 51 (April 1973): 382.

130. Diane Fischler, "Florida's Turpentine Industry," *Florida Living Magazine* 15 (October 1995): 29.

131. Lauriault, p. 311.

132. Ibid., p. 326.

133. Conditions in this and other Florida camps generated the prolonged crusade against peonage by Gainesville District Attorney and later United States' Attorney General Fred C. Cubberly. See Lauriault, p. 321. The existence of peonage in Florida turpentine camps was brought to public attention by various commentators including New York attorney Mary Grace Quackenbos who came to Florida to gather evidence against corrupt New York labour agents who recruited several thousand newly-arrived immigrants and delivered them to southern employers, such as the Florida East Coast Railroad, for a fee. A series of prosecutions were brought against the Jackson Lumber Company of Pensacola. See Shofner, "Postscript," p. 17; Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969*, (Urbana: University of Illinois Press, 1972) pp. 95-109; Mary Church Terrell, "Peonage in the United States: The Convict Lease System and the Chain Gangs," *Nineteenth Century* 68 (August 1907): 306-322.

134. Bond, p. 197.

135. Winthrop Packard, *Florida Trials: As Seen From Jacksonville to Key West and from November to April*, (Boston: Small, Maynard and Company, 1910), p. 281.

136. Bond, pp. 198-199.

137. Stetson Kennedy, *Palmetto Country*, (Tallahassee, F.L.: Florida A & M University Press, 1989), p. 265.

138. Ibid., p. 266.

139. Lichtenstein, "Rugged Gates," pp. 4, 10, 17-18.

140. FTU 19 August 1900, p. 5. Between 1880 and 1890 Florida attracted migrants from Georgia and South Carolina, and lost population to Alabama, Georgia and New York; between 1890 and 1900 Florida attracted migrants from Georgia, North Carolina and South Carolina, and lost population to the states as in 1880. See 'Major Destinations of Black Out-Migrants 1880-1900', in Ayers, *Promise of the New South*, p. 457.

141. *The [Kansas] Plaindealer* 26 January 1900, p. 2.

142. Crooks, *Jacksonville after the Fire*, p. 35.

143. Patricia L. Kenney, "LaVilla, Florida, 1866-1887: Reconstruction Dreams and the Formation of a Black Community," in David R. Colburn and Jane L. Landers,

The African American Heritage of Florida, (Gainesville, F.L.: University Press of Florida, 1995), p. 185.

144. Alejandro Portes and Alex Stepick, *City On The Edge: The Transformation of Miami*, (Berkeley, C.A. and London: University of California Press, 1993), p. 76.

145. Booker T. Washington, *The Negro in Business* (Boston, 1907), quoted in Donald H. Bragaw, "Status of Negroes in a Southern Port City in the Progressive Era: Pensacola, 1896-1920," *Florida Historical Quarterly* 51 (January 1973): 281.

146. Bragaw, pp. 286, 292.

147. Ibid., p. 302; McGovern, "Pensacola," pp. 24, 33.

148. David Sowell, "Racial Patterns of Labor in Postbellum Florida: Gainesville, 1870-1900," *Florida Historical Quarterly* 63 (1985): 434-444.

149. Ibid., p. 441.

150. Ibid., p. 444.

151. TMT 16 December 1902, p. 3.

152. Willard B. Gatewood, Jr., "Negro Troops in Florida, 1898," *Florida Historical Quarterly* 49 (July 1970): 1-15.

153. Norbert Elias, *The Civilizing Process: The History of Manners and State Formation and Civilization*, Translated by Edmund Jephcott, (Oxford: Blackwell Publishers, Ltd., 1996), p. 124.

154. Ibid., pp. 443-444.

155. Ibid., p. 207; Garland, pp. 216-218.

156. Garland, pp. 228, 232.

157. Ibid., p. 236.

CHAPTER 3

PARDON STRATEGIES AND CONVICT SUPPORT NETWORKS

It is a false idea that prevails with some that the argument of counsel and promiscuously signed petitions furnish the cause of pardons. Many of the pardons granted are given when no attorney is present or even appears before the board in the case . . . Each case is taken up and reviewed with great care, and is often passed for future consideration, awaiting some facts the board is in doubt concerning.¹

The Pardoning Board is as perfectly a part of our legal system as the Circuit Court with its jury and the Supreme Court with its strict rules of government. The system would be incomplete with either eliminated.²

As has been developed through my discussion of prison conditions, it has been clearly shown that the intelligent, law-abiding citizen has been studying and recognizing far more clearly than ever before, his responsibility for and relationship to the more unfortunate criminal classes.³

The pardoning power in Florida was an integral part of the State's 'constitutional scheme'. It was accepted by Cabinet officers that convicts had a right to review, that an executive body should hear applications and had a moral duty to make recommendations and act where necessary, particularly when a capital sentence had been imposed. Attorney General William H. Ellis remarked in 1904:

[T]he pardoning of criminals inadvisedly [sic], has a bad effect, not

only on jurors, but upon the people at large, and renders difficult the administration of the criminal law, but then . . . you must remember that when an application is made to spare a poor fellow's life, when no other sentiment is appealed to but that of mercy, it is very difficult to say, no, and one should not decline to exercise that virtue in another's [sic] behalf unless the very last analysis of the evidence and conditions surrounding the case forbid from a standpoint of public policy the sparing of the applicant's life.⁴

Such functional changes occurred against a background of changing sensibilities and perspectives on leasing and penal discipline. David Garland argues that '[t]he most obvious sense in which the civilizing process may be seen to have affected the penal system is in the extension of sympathy . . . to the offender, a development which has gradually ameliorated the lot of the offender and lessened the intensity of the punishment brought to bear'.⁵ He notes that 'the enhancement of sympathy for offenders and the amelioration of penal conditions is perhaps the least well developed' aspect of the 'civilising' changes in punishment.⁶ These developments coincide with the rise of the expert of the Progressive era and the emergent culture of professionalism of the late nineteenth century. Through the disciplinary, surveillance and examination procedures of the convict lease, 'experts' such as the Commissioner of Agriculture and other prison personnel gained knowledge of their penal charges. Pardon became part of a process where focus shifts from the offence to the offender, and his/her character, motivations and relationship to the victim, and therefore involves the use of 'experts' to form knowledge of the individual and identify the sources of his/her reformation.

Over the years, the State of Florida seemed to be actively encouraging its convict population, especially long-term prisoners, to apply for pardon. In 1892 Commissioner Wombwell suggested that the pardon process should be made easier for life-term convicts and in 1894 he recommended that they should be eligible for

pardon after at least seven years 'of exceptionally good conduct' even if they could not provide all the necessary documentation: 'Nearly all of such convicts are very poor, and after a few years in a convict camp are forgotten by friends and often relatives'.⁷ The Legislature of 1895 directed Governor Mitchell to appoint an agent and pay him \$500 per year to visit and inspect each convict camp, and to 'examine into the case of any convict he may think deserving of executive clemency, and take the necessary steps to bring such cases before the State Board of Pardons'.⁸ In his first report of December 1896, convict agent, Colonel W. R. Moore, reported that he had been able to recommend to the pardon board several long-term prisoners with records of good conduct: '[I] am gratified to state that some have been released who were dragging out a miserable existence away from their homes and families'.⁹ The state legislature also signalled its satisfaction with the work of Colonel Moore: 'This work we find to have resulted in the pardoning within the last two years of twenty-four convicts. The number receiving pardons in the two previous years, 1893 and 1894, being only twenty-one'.¹⁰ It recommended that an additional \$1200 be set aside to meet the 'research' and travel expenses of the agent.

The duty to 'look up the records of all prisoners applying for pardon and assist them when the case is a worthy one' remained part of the duties of convict inspectors in subsequent decades.¹¹ Further, by the 1910s Board members were using commutation to make a prisoner eligible for conditional pardon, subject to his/her continued good behaviour. Under the terms of the law of 1915 on gaintime:

Prisoners sentenced for life imprisonment who have actually served fifteen years and have sustained no charge of misconduct and have

a good prison record may be recommended by the Board of Commissioners of State Institutions to the Board of Pardons for a reasonable commutation of sentence, and if same be granted, commuting the life sentence to a term of years, then such convict will have the benefit of the ordinary commutation, as if originally sentenced for a term of years, unless it shall be otherwise ordered by the Board of Pardons.¹²

General information and knowledge about the pardon process seems to have been quite widely diffused among the population in rural, small town or larger urban areas. A copy of the laws and regulations governing pardon applications was furnished upon request to would-be applicants or interested parties on their behalf by pardon board secretaries. The clerk of the circuit court in which the applicant had been convicted was required to provide a copy of the indictment and conviction free of charge. Pardon applications could entail a lengthy and costly process, often running to several hundreds of dollars in legal fees over a period of years. While applicants were not required to engage an attorney to represent them and complete the necessary documentation (any 'good citizen' would do),¹³ the majority of successful applicants preferred legal representation to reliance on the convict supervisors. A number of lawyers such as William C. Hodges, Frank Pope and M. M. Scarborough found pardon applications provided a steady and lucrative stream of business.

While the basic legal costs of securing a pardon or commutation could amount to several months' wages for an unskilled labourer, people scraped together the necessary funds, perhaps in some cases further reinforcing ties of peonage to employers. White employers or patrons in rural areas came up with the necessary cash to pay off fines levied by local courts on African American labourers charged with misdemeanours or lesser felonies, and were able

consequently to control the labour of these offenders and restrict their freedom of movement. United States' Department of Justice investigations exposed 'cases of wives and children held, virtually as hostages, until the return of a father who remained away from the plantation, even if he had been "run off" by his employer. This situation was unique to black families'.¹⁴ Poverty alone was not always an insurmountable obstacle to seeking clemency. In his application for a full and free pardon, Frank Wynn, convicted of manslaughter in Jackson County in Fall 1897 and sentenced to two years at hard labour, emphasised that bail had been 'readily and easily obtained, being signed by some of the best Merchants, and Citizens of the County in which the offence was committed'.¹⁵ Sallie Shaw and her daughters from her first marriage ran a boarding house and restaurant near the Cummer Lumber Company's log camp in Levy County. She was indicted for the second degree murder of her second husband, Sam Shaw, and was subsequently convicted and sentenced to life imprisonment at Raiford in April 1915. In her application for pardon, her ability to post the bond of \$1,000, fixed by Judge John R. Willis at the preliminary hearing in October 1914, is emphasised to demonstrate the applicant's economic self-sufficiency and ties to the local community; that she was a good risk.¹⁶ As Conley in her study of nineteenth-century Kent concludes: 'Persons of good reputation with ties to the local community were less likely to become repeat offenders and could be readily identified and apprehended if they did . . . the belief that persons of good repute were both deserving of mercy and less likely to be a threat to the community was based on sound logic and precedents'.¹⁷

Regardless of how strongly officials encouraged convicts to apply for

clemency, applications for pardon, commutation and reprieve still had to satisfy a number of audiences as to whether or not an offence was pardonable: the Board members; the sentencing judge and prosecuting attorney, the victim's family and friends, the local community, those who leased state convicts, prison personnel including convict inspectors and camp captains, the press, and the applicant. Each of these groups had definite and often conflicting views on what constituted criminal activity and who could be characterised as being of a criminal type. This chapter explores the strategies employed by convicts and their lawyers to secure the release of the former, the language of the pardon applications, and the sources of community and institutional support that convicts drew on over months or years in their quest for relief from imprisonment at hard labour in the Florida State Prison System.

Between 1889 and 1918 it is possible to detect a shift from an ad hoc to a more standardised application process shaped by pardon board members and by the attorneys who appeared regularly to argue on behalf of their clients. Standardisation was necessary partly because of the increasing volume of clemency applications. Whereas the Board handled less than fifty applications a year in the early 1890s, by the beginning of the twentieth century the volume of applications for pardon and commutation of sentence had increased dramatically from that of a decade previously; from 1899 to 1904, there were 759 separate applications for pardon. During 1903 and 1904, 189 applications were submitted, and eighty-one pardons were granted, seventeen of which had been on file prior to January 1903.¹⁸ Between 1911 and 1913, 396 convicts applied for pardon and sixteen for commutation of the death sentence; 155 pardons were issued, six death

sentences were commuted, 238 applicants were denied clemency, and thirteen had their cases passed over for further investigation and consideration.¹⁹ During Governor Trammell's administration (1913-1917), the pardon board heard 1713 'presentations of applications for clemency' from 1099 individual convicts; 629 (57 percent) applicants were denied relief, while 427 (39 percent) did receive clemency.²⁰

There is little available information on exactly how long each pardon board session lasted, but as the volume of applications continued to rise, this inevitably meant that members had little time to review the merits of each individual case. At the pardon board meeting of 6 December 1916, 135 cases were reviewed, and at a subsequent meeting three days later, a further seventy-eight cases were considered.²¹ There appear to be three main reasons for the increase. Each year the number of committals to the State Prison System increased, and this inevitably gave rise to larger numbers of prisoners seeking clemency, especially as pardon was a recognised route out of the convict lease for a significant number of convicts who were encouraged by prison officials to seek clemency, if they believed they had a deserving case. At the same time, a successful escape from the State Prison System appeared to be getting harder to accomplish. Attorneys who relied on pardon and commutation applications to provide them with a steady source of income had strong economic incentives for representing large numbers of such clients. Finally, by the early twentieth century there appeared to be widespread dissatisfaction with the courts, especially among African Americans, and clemency appeals constituted one means of expressing this dissatisfaction.²²

Pardon applications

Pardon applications generally begin with a description of the defendant/applicant and details of the conviction and sentence, partly to counter any negative characterisations from the trial stage. Applications then discuss the circumstances of the crime, often beginning with the applicant going about his or her normal daily business or recreational activities, then encountering an unexpected event from which a tragic or bloody outcome is inevitable: only later are the presence and role of the weapon mentioned. This type of narrative format allowed the petitioner to demonstrate several points: 'First, the innocence, unintentionality, or legitimacy of their actions grew out of the events themselves, the words exchanged, the objects and images used'.²³ Secondly, pardon applications described how weapons came into play; they offered different interpretations of premeditated, justifiable, unintentional, wilful and defensive actions, accounted for motive, and tried to build coherence into actions interpreted negatively at the trial. Florida was undergoing tremendous change in this period, but only occasionally do political or 'historical' events such as the stationing of troops in Tampa during the Spanish-American War, the labour disputes of cigar workers, or World War I, frame the pardon applications in either an explanatory or interpretative way. As with the letters of remission of sixteenth-century France: 'Either the historical situations are seen as irrelevant to what happened or they are integrated into the story as givens, requiring no comment, rather than being a central ordering device'.²⁴ The focus was overwhelmingly local and domestic.

Whereas at the trial defendants and witnesses had to confine themselves to the circumstances of the criminal act in question in a process orchestrated by

judges and attorneys, pardon applications provided offenders with the opportunity to present, in their view, a more rounded or fuller story with greater emphasis on the context of the act or event. Trial testimony and pardon applications thus represent different types of cultural construction of the same event or set of events in their wider context. In the pardon application, the applicant's explanation of the crime predominates; whereas a criminal trial began with and focused on the victim's story, a pardon application began with that of the defendant. A persuasive story could be extremely important in satisfying any unwritten criteria for success in this aspect of the application documentation process. In some cases, however, the narrative played little part in the eventual outcome of the pardon application if the case received substantial support from influential persons in the local community. Governor Gilchrist admitted: 'In some cases . . . where a party has served a sufficient length of time, and has a good prison record, showing evidence of reform worthy of pardon, pardons were granted, regardless of the nature of the offense. Punishment should be meted out as retributive, preventive and reformative'.²⁵

Pardon applications were collaborative efforts between prisoners, attorneys or convict supervisors and prison personnel. It is not clear how often lawyers consulted their clients or if they visited them in the convict camps; nevertheless it is the language of the lawyer that permeates the actual application texts. In the official, typed 'Application for Pardon', submitted by her attorney, Augustine Verot Long, Josephine Howard bases her appeal for clemency on the following issues:

Gentlemen: I hereby apply for a conditional pardon for the act for which I was convicted and sentenced [first degree murder, life

imprisonment], according to the documents accompanying this application. I have deeply regretted the act, which however it may have appeared was done in defense of my life. I left my little child outside and it has tortured my mind and heart all these long years - wondering and fearing for his safety. I have spent eleven years in the State Prison, and have no complaint to make as to my care and treatment there, but the years of imprisonment and worry have told on my health, and I am seldom well. I prayed for years that God would send me some one to help, and he answered my prayer and has enabled me to collect the necessary papers and endorsements. I will promise to live a humble Christian life, and be true to the trust you place in me if you grant my plea. When I regain my strength I hope to prove myself a useful citizen, and will be humble [sic] grateful as long as I live. Your humble servant,²⁶

In her own handwritten letter to Secretary of State R. A. Gray, Howard wrote that she had been in prison for ten years and, 'I got a little Pitiful child out there and haven seen it since I Ben in Prison to Love. Lost my Health in Prison help me Please Sir and I Will all ways be good. I was secentis [sic] in Gainesville, FL alashaway CO. it taken me my Best to save my Life in My on house. Then got life. Please Sir help me one time to will. Thank you all . . . Your humble servant'.²⁷ The language of pardon applications generally reflect the lawyer's justifications or interpretations of the behaviour of their black and lower class clients, and as such they could be convincing and effective in appealing to the sentiments and prejudices of the Board members. In order to satisfy the Board, judges and prison personnel, applicants had to play by both the written and inferred rules, in terms of the gathering of petitions and endorsements from local persons of influence and camp personnel, and in the events selected and use of language in the application document. For example, the language of supplication and appeal to the merciful executive that appears in both of the above texts was necessary rather than that of confrontation or expectation, and implies conscious acknowledgement of the locus of social and political power.

There were no specific guidelines as to when the Board would find a case compelling enough to act on, but pardons were usually granted to subjects considered fit for mercy rather than in recognition that their conviction was unjust or invalid. Reasons for granting pardons and commutations can be divided into three separate but interrelated strands. Board members might have serious reservations about the facts of the case, for example, the degree of premeditation or provocation, or whether the pardon applicant was an accessory to a criminal act rather than the actual perpetrator. Secondly, Board members might express dissatisfaction with the court procedure. They might consider that the defendant had been deprived of the right to a fair trial, had been convicted on perjured evidence, or display doubts about the legality of the court term. Alternatively, the Board might wish to take account of the defendant's status or character. Factors such as the defendant's previous good record, evidence of mental deficiency or insanity, the deteriorating health of the offender while in the prison system, or intoxication at the time of the offence (although this may have changed as increasing numbers of Florida counties turned dry by local option in the years before the passage of the Eighteenth Amendment and the Volstead Act of 1919²⁸) were important in decisions to commute a death sentence or reduce a term of imprisonment, that were based not only on the circumstances and context of a criminal act, but also depended on the perceived character, status and relationship of the offender and victim.²⁹

There were also no specific guidelines as to when the Board would refuse to act upon an application for pardon or commutation of sentence. Undoubtedly, unwritten motivating forces such as politics, public opinion, and a Governor's

private views on capital punishment, informed decisions on clemency. Scott views the pardon power as being inextricably linked to capital punishment.³⁰ In Florida, a reprieve postponed or delayed the execution of capital offenders, and could be granted for a variety of reasons, such as to facilitate an appeal to a higher court, to investigate newly discovered evidence, to determine the validity of an insanity appeal, and in contrast to pardons and commutations, was granted by the governor acting alone (but he could choose to consult with the Board of Pardons).³¹ Like a commutation, but in contrast to a pardon, it did not require acceptance by the pardonee to be effective. In practice, the power to commute generally affected the substitution of life imprisonment for a sentence of death, restricted in Florida to first-degree murder and rape by 1890. Scott and Rothman estimate that prior to the *Furman v. Georgia* Supreme Court decision of 1972, commutations of death sentences to life imprisonment were granted in approximately one-quarter of capital cases.³² Commutation does not effect a restoration of civil rights and can be revoked at any time prior to the sentence change taking effect. The reasons given for granting commutations included: recommendations from the presiding judge and prosecuting attorney, a re-evaluation of circumstantial evidence, the youth of the offender, evidence of insanity or 'because of the peculiar circumstances of the crime'.³³

Mental competency

One of the thorniest issues to confront the Board was that of mental competency. Applicants appealed for mercy on the basis that they were not legally competent to suffer the penalty of death or a term of imprisonment that had

been decided by the courts, or that they were mentally deficient or insane. Board members were not medical experts and unless the evidence was transparent, they could find such cases truly perplexing. The first commutation issued by the pardon board as constituted under the 1885 Constitution was for twenty-six year old Jacob Hammond, convicted of the murder of Scott Smith in Volusia County in April 1889. Governor Fleming signed the death warrant on 6 July 1889 and the execution was scheduled for 1 August, but Fleming was then granted a reprieve until 5 September. The motion for a new trial included medical and other testimony which centred on the argument that Hammond suffered from epilepsy and was not accountable for his actions during attacks. It appears that the medical evidence was instrumental in persuading members at the Board meeting of 30 August 1889 to commute the death sentence to life imprisonment.³⁴

The *legal* definition of insanity, the M'Naughten test, formulated by English High Court judges in 1843, and adopted in the United States in the second half of the nineteenth-century, placed emphasis on reason, on knowing an act was wrong. Quite simply, if a defendant was insane, he could not know right from wrong, and could not be responsible for committing a crime. Ideas about mental illness and disease evolved rapidly in the nineteenth century and some states supplemented M'Naughten by adding the concept of 'irresistible impulse'. This was premised on the theory that 'certain conditions had the power to affect human emotions without necessarily destroying cognitive functions'. A defendant was insane if he was unable to keep his passions in check 'either because of some lesion in the brain or some deep-seated flaw in the neurons'.³⁵ Florida courts did not recognise 'irresistible impulse' but they did recognise 'temporary insanity', a

condition whereby, but for a passing moment, a person was normal and emotionally stable.

Like their Northern counterparts, Southern medical authorities perceived mental illness as a physical disease 'rooted in physiological disfunction or in anatomical (or structural) disorder of the brain or nervous system'.³⁶ Nineteenth-century definitions of mental illness in the South were premised on race, rooted in Social Darwinism, and gender - that because men and women were biological opposites, each carried 'separate burdens of sanity'.³⁷ With regard to the causes of insanity, a distinction was made between 'predisposing' (hereditary) causes and 'exciting' (environmental or social factors, which were heavily gendered) causes. Male 'exciting' causes stemmed from normal masculine activities of study or business; female 'exciting' causes stemmed from female domestic duties and menstrual cycles. In studying late nineteenth and early twentieth-century committals to the Alabama Insane Asylum, John Hughes found that the sources given in patient records for male madness 'suggest a more value-laden description of men, who by their own uncontrolled or excessive actions brought on their own insanity', while female madness was viewed as unavoidable.³⁸

Alexander Campbell's defence team entered a plea of 'temporary insanity' as a proactive strategy to save their client from the gallows in 1891. They depicted Campbell as a *crime passionelle* whose action of shooting nineteen-year old Mamie Joseph after she rejected his proposal of marriage was best explained by his history of nervousness, consumption, epilepsy and neuralgia. In his study of the trials of women who killed their former lovers to avenge their sexual dishonour, Robert M. Ireland notes that expert testimony often asserted 'that a

broken engagement . . . could easily produce female insanity [which] compounded the image of the average woman as mentally fragile, semi-hysterical, and emotionally unsound'.³⁹ For example, during the 1865 trial of Mary Harris, one of her lawyers contended that the nation's insane asylums were full of women driven mad by broken engagements. Another of her lawyers, Daniel Voorhees, theorised that because marriage meant so much to women, a broken promise inevitably brought despair. He went on:

It is not so with man. His theatre is broader. No single passion can so powerfully absorb him. A variety of interests appeal to him at every step. If disappointment overtakes him, a wide and open horizon invites him to new enterprises, which will relieve him of that still, deep, brooding intensity which is the pregnant woe, insanity, and the death to woman.⁴⁰

In theory the definition of a 'crime of passion' as 'violence generated by thwarted love, jealousy, [and] hatred that rises to the level of obsession'⁴¹ is not gender-specific, but the notion that a man could be driven mad by a broken engagement was unacceptable to a late nineteenth-century Florida court. Rather, Campbell appeared as a feckless and dishonourable young man who had lied to the court, and had abused the privileges of education and familial affection that he had enjoyed.⁴²

On 23 May 1891, Alexander Campbell was found guilty of murder in the first degree, with a recommendation of mercy which meant a sentence of life imprisonment, of which he served eighteen years. The social position of offenders could influence both the courts and the Board: education and social position did not necessarily diminish moral and legal responsibility, thus a crime by a socially-advantaged defendant could be regarded as more heinous than one committed by someone perceived to be of low mental capacity and insignificant economic worth,

but this does not mean to say that the pardon power was used to remedy such discrimination in the administration of justice.

Both inside and outside the courtroom, lawyers, judges and doctors were at odds over the interpretation of the definition of insanity; the artificial line between medical and legal insanity, and the relationship between mental health and criminal responsibility, were open to conflicting interpretations. Further, the retributivist or utilitarian concept of punishment as a means of deterrence and desert (dictated by the crime) as advocated by Florida residents and the press, conflicted with the 'Progressive' emphasis on environment and scientific evaluation (dictated by evaluation of the criminal personality) advanced by younger attorneys in criminal cases. The contest between the legal meaning of insanity with its emphasis on awareness of wrong doing and the medical question of mental illness or disease in 'an age of rampant science'⁴³ was fought in Florida in many cases at both the trial and post-sentencing stages, and forced the Board to wrestle with these issues, with variable results. Calvin Brewer successfully petitioned the Board in 1908 for a commutation of the death sentence against his son, on the basis that Wyatt Brewer at the time he shot Etta Lee, was 'demented, insane, mentally irresponsible'.⁴⁴ But ten years earlier, medical and popular opinion on the mental incapacity of Enoch Doyle could not save him from the gallows. Pleas of temporary insanity or feeble-mindedness not used at the trial or sentencing stages had to be incorporated carefully and convincingly into a pardon application, backed up with irrefutable medical evidence, to have any hope of success.

Even in cases where there appeared to be strong doubts as to whether a

defendant was legally competent to suffer capital punishment and there appeared to be convincing evidence of mental deficiency, the pardon board was not always compelled to act, especially if the Governor, who could ultimately veto any pardon board decision, remained unmoved. This is demonstrated in the case of thirty-eight year-old African American defendant, Enoch Doyle, who was convicted on 27 May 1896 at the Spring term of the Circuit Court of Duval County of raping Priscilla Youmans, and sentenced to death by Judge Rhydon M. Call of the Fourth Judicial Circuit of Florida.⁴⁵ It took the jury, which contained one African American member, March Ponder, fifteen minutes to return the verdict. Priscilla Youmans testified that on 19 August 1895, Doyle had appeared at her house near Baldwin, asking to purchase five cents-worth of pears. 'She told him that her husband did not allow her to sell the pears', but Doyle then followed her into the house and offered her five dollars to consent to have sexual relations with him, drew a knife and threatened to kill her when she refused. Doyle was arrested in December 1895 while 'gambling with a crowd of negroes'.⁴⁶

Preston D. Cockrell was appointed by the court to defend Doyle, and had the misfortune to make his maiden speech to a jury in a capital case where rape was the crime and the defendant was African American; the odds were against him from the start. McGovern observes: 'Attorneys who were appointed by the courts to defend unpopular clients bore the burden of public disapproval . . . A defendant who was destitute and did not have knowledge of the law was lucky indeed to have a lawyer who would break caste loyalties during the trial, and continue to work on his or her behalf, without pay for years afterward'.⁴⁷ Cockrell nevertheless attempted to show that Doyle was in Savannah at the time the offence

was alleged to have taken place, and in December 1895 was travelling through Florida in search of work making turpentine boxes.⁴⁸ Other witnesses placed Doyle near Baldwin on 14 August, and Doyle was understood to be wanted in Marion County for another complaint of rape, dating from December 1894.

Spurred by his desire to fulfil his duty toward his indigent client and the fear of losing his first major case, Cockrell immediately moved for a new trial, but his motion was denied, so he appealed directly to the Florida Supreme Court. Cockrell argued that the evidence did not support the conviction for rape, and used the issues of consent and lack of resistance to charge that the conviction was based on the 'unsupported testimony of the prosecutrix', who had wrongly accused and identified Doyle as her assailant.⁴⁹ This strategy was dashed when the Supreme Court affirmed the judgement of the lower court:

While the testimony of the prosecutrix might have been more lengthy in details, and, therefore more satisfactory to those minds which shudder at taking human life for a crime sometimes so hard to defend against as rape, yet the testimony of this woman, who is not shown to be of bad character for veracity or chastity, and who was an utter stranger to defendant, and therefore not apt to be influenced by motives of animosity toward him, seems to have been given in a spirit of truth, and sincerity.⁵⁰

Cockrell's effort to secure commutation by attempting to reinterpret the circumstances of the crime, and present the argument that Doyle was being punished for a crime he did not commit, failed. However, Doyle's behaviour during his incarceration at Duval County jail, in the period from his arrest in December 1895 to the affirmation of sentence in May 1897, provided Cockrell with an alternative set of arguments for the Board of Pardons.

Right from the trial, Doyle's behaviour was closely scrutinised by *Times Union* reporters. When the guilty verdict was read to the court, Doyle was

reported to have, 'put his face in his hands and laughed. The laugh was flavored with sarcasm for the ignorance of the jury in bringing in a verdict so absurd. Somewhat later, however, he realized that the verdict meant death, and he became depressed and said: "Well, I ain't the first nigger that's been hung and I guess I won't be the last. All I want is thirty days to pray in". The *Times Union* report continued: 'During the last few months Doyle has exhibited strange symptoms of insanity, and the plea of insanity will be urged upon the pardoning board when a petition for commutation of sentence is presented'.⁵¹ Doyle's character and actions thus entered the controversial arena of legal insanity, and were contested by medical and legal experts, as well as being subject to popular interpretation.

On the day that Doyle's sentence was affirmed, the Duval County jail guards called for his sanity to be examined:

We, the undersigned, being citizens of Duval county, Florida, neither of whom is akin to Enoch Doyle, a citizen of Duval county, say that the said Enoch Doyle is personally known to each one of us and that our knowledge of the said Enoch Doyle is sufficient to justify the belief that he is insane, and we respectfully ask that an examination be instituted and made as required by law to inquire into his sanity. Moses Bowden, jail guard; Patrick Fallon, jailer; R. F. Bowden, ex-sheriff; Richard Thompkins, jail guard; Dennis Jenkins, jail guard.⁵²

A three man committee that included one doctor was appointed on 1 May by Judge William H. Baker to examine the 'mental condition' of Enoch Doyle, and six days later reported:

Physically the man seems well, but in our opinion he is mentally unsound. There are numerous scars on his head indicating that at some time violent blows have been received upon the organ. His general appearance is sufficient to cause one to doubt his sanity. We carefully questioned him upon various subjects and his answers invariably betrayed a lack of mental development. He has no special delusions, nor has he hallucinations, but is highly excitable and does not seem to appreciate or realize his present position . .

. He is not morose or vindictive [sic], but highly excitable. The Jailor states that on more than one occasion he has found it necessary to restrain him by locking him in an isolated cell.⁵³

The committee's conclusions led Cockrell to believe that Doyle's sentence would be commuted to incarceration in the State Asylum for the Insane at Chattahoochee.⁵⁴ Notice of applications for pardon and commutation of death sentence against Enoch Doyle was published from 15 to 26 May 1897 in the [Jacksonville] *Metropolis* newspaper.

However, a second committee appointed by Judge Baker to evaluate 'the moral responsibility for crime' of the prisoner, reported that on examination they found Doyle, 'to be ignorant, depraved and brutish in his nature; his mental development is only what we would expect to find in such a man, but we do not think it is abnormal, or such as to warrant his being excused or exempted from the penalty provided by law for any crime he may be proven to have committed'.⁵⁵ The Board was therefore faced with two committees, both containing medical men, but each arriving at different conclusions. This concerned Cockrell:

I was appointed by the Court to defend this negro and having heard from various sources, Sheriff, Jailor and Jail Guards and other persons thrown more or less constantly with the negro, that he was crazy I proceeded in accordance with the Statute to have his sanity tested having been advised to do so by Judge Call. The committee which was appointed to examine him declared him insane and on this basis I made application for a commutation of his sentence. I owe it to the negro to again ask the Board of Pardons to pass on this application and by their decision say whether they rely on the proof that he is insane or rely on the opinion of the three physicians that he is sane.⁵⁶

Jacksonville clergy and church elders declared their support for Doyle's clemency plea on the grounds that he was insane. D. W. Gillespie, Presiding Elder of the African Methodist Episcopal Church on East Beriver Street and Doyle's 'spiritual

advisor', informed Governor Bloxham:

In my humble opinion which is short by my Race generally here in Jacksonville, the man is indeed insane he seems not at all to realize his condition regarding it sometimes as a joke . . . His face and manner show him to be a man of very low intelligence and while I am no expert on sanity or a doctor of medicine yet I am anxious to lend whatever weight my opinion that he is insane may have with your excellency to the end that something may be done in the interest of this condemned man.⁵⁷

Further letters favouring commutation came from Judge Call and State Attorney Augustus G. Hartridge. Call advised the Governor that had he been fully aware of Doyle's 'low mental capacity', he would have sentenced him to life imprisonment.⁵⁸

Combined pressure led Bloxham to grant a temporary reprieve from 1 to 14 September. During this stay of execution, Napoleon Bonaparte Broward, Sheriff of Duval County, took the opportunity to write to Governor Bloxham, to reiterate his support for capital punishment, and his belief that Doyle was not a fit subject for the gallows, not because he was insane or a 'lunatic' but rather that Doyle was 'simply a person without any good sense'. As a result, Broward doubted Doyle's 'capacity to realize the enormity or the offense', thus a term of life imprisonment would be 'a more fitting punishment'; in other words, the execution of this offender was not in the public interest.⁵⁹ African American defendants were frequently popularly characterised as childish, emotionally unstable, brutish, semi-civilised, vengeful, violent, ignorant, indolent or primitive, but persons without good sense still carried moral responsibility for their actions as rational moral beings. The image of Doyle as a childlike character or 'poor dumb brute' had been reinforced in the description of his reaction to the death warrant. This was read to him on 11 August 1897 and set the date of the

execution as 2 September: 'Doyle did not seem to realize the gravity of the occasion and stood leaning against the cell door fidgeting and smiling while his death warrant was being read'. He was also reported as saying: 'I ain't got much longer to live. Well, I don't care, if de white fo'ks wants ter kill me; I kain't help it. What kin I do? If dat big man dere (pointing to the death warrant) wants me hung, all right. I'm ready. I ain't done nothin' ter be killed fur an' I don't gin much nohow'.⁶⁰ Cockrell's next move was to apply for an injunction restraining Sheriff Broward from proceeding with the hanging.

Doyle was incarcerated with Robert Henry, convicted of murdering his wife, and initially both were scheduled to be executed together in Duval County's first double hanging for decades. 'Henry and Doyle take matters very coolly and are not entirely given over to melancholy meditation, for they sing and laugh, and few would know that Death had marked these for his own. Neither, however, is entirely without hope, though both are receiving spiritual consolation from Rev. William J. Kenny of the Catholic church, who pays them almost daily visits'. The *Times Union* continued to liken Doyle to a 'dumb brute' and used his attitude towards the spiritual care provided by the Catholic Church as evidence of his mental inferiority: 'When asked if he had religion yet, Doyle said: "I don't know. I tries mighty hard to get 'llgion [sic], but I don't know much about such things. I kneel down and pray and pray so hard. Den I gets up and I goes to cussing. I don't know much 'bout 'llgion. De priest he mighty good. He comes to see me every day and he says lots of things, but I don't understan' all he says'.⁶¹

In the end, Doyle requested the services of an African American Methodist preacher, and Rev. Archibald J. Carey, D.D., Pastor of Mt. Zion A. M. E. church,

responded to the call.⁶² This was a shrewd move on the part of Doyle as two days later, Sheriff Broward received notification of the reprieve granted at 'the urgent request of Rev. A. J. Carey and a large delegation of other colored ministers, who desire further time to administer to the spiritual welfare of Enoch Doyle'.⁶³ Carey was also reported as 'trying to secure evidence to prove that Priscilla Youmanns was mistaken in the identity of the man' and to have the payrolls of a railroad company in Savannah checked to prove that Doyle was working in their rosin shed on the day of the rape. 'The condemned man has brightened up considerably since he was granted a respite, but he is such an ignorant darky that few people see him without believing that he is mentally unbalanced. He claims to have religion now, but he still can not tell why he thinks he will be saved'.⁶⁴ To reinforce this image, the 'Sister of Mercy', Sister Mary Ann, who no longer visited Doyle after his request for Protestant spiritual advisors, was quoted on her opinion of Doyle: 'I think the poor fellow is more of a beast than a human being, and, that he is incapable of knowingly committing crime'.⁶⁵ Doyle, attended by four African American ministers on the gallows, was executed on 14 September at 10.35 a.m. and pronounced dead by the attending physician, Dr. P. J. Stollenwerck, who four months earlier had declared Doyle to be incapable of knowing the gravity of his actions. After the execution, Gillespie gave his evaluation of Doyle's faith: 'He declared for religion in a way, but I doubt if he comprehends it'.⁶⁶

Doyle's case presented Governor Bloxham with several opportunities to intervene and recommend to the pardon board that the death sentence be commuted, but beyond the temporary stay of execution, he chose not to. As early

as 6 August Governor Bloxham had made up his mind not to vote to commute in this case, preferring to accept the conclusions of the second committee on Doyle's mental state, which contained three medical experts, as the more reliable. He was satisfied that Doyle was responsible for his actions. In a separate communication, Lang argued that Doyle's attorney, 'as a last resort, got up a plea of insanity as a basis for application for commutation of the death penalty, and which plea of insanity, once confirmed, was afterwards refuted by three of the most prominent and reliable physicians of the city, can have no weight with the Governor in inducing him to set aside the judgement of all the tribunals of justice known to our laws'.⁶⁷ As Cockrell had argued originally that Doyle was the victim of a case of mistaken identity, and only later used the plea of mental incapacity from which observers could infer that Doyle was guilty of the original rape offence, he was unable to provide the pardon board with a convincing case. To Bloxham and the other executive officers, Doyle appeared to conform to racial stereotypes of African Americans' inferior mental development, casual standards of personal conduct, and absence of religious or moral outlook. Such factors were insufficient to persuade them that Doyle was a fit subject for mercy and Board members concluded that the public interest would be best served by the execution of Doyle.

In considering whether to commute the death sentence against John Thomas, convicted of first degree murder in Franklin County in Fall 1913, the pardon board in February 1914 focused on Thomas's 'weak mental condition'. The Franklin County Sheriff advised the Board that Thomas 'is almost [mentally] irresponsible and is a very stupid negro'. While a similar characterisation was used for Doyle, the crucial difference seems to have been in the attitude of the

Governor: Governor Gilchrist was willing to vote in favour of commutation for Thomas, while Bloxham was less pragmatic in his views on mental illness and its relationship to criminal responsibility. The submission of medical certificates from 'two physicians in good standing in Apalachicola, advising that [Thomas] is a negro of an unusually low order of mentality and possesses very little intelligence, perhaps not enough to realize the seriousness of his crime, or of the penalty which he has been sentenced to suffer', together with a petition from 'most of the substantial business people of Apalachicola', was enough to persuade the Board to commute Thomas's sentence to life imprisonment.⁶⁸ No such action was taken in the case of Enoch Doyle where the Board of Pardons was perhaps more reluctant to interfere with Supreme Court decisions in cases of rape, where public opinion was much more hostile, than in cases involving murder or manslaughter. Strong executive action was needed by the Governor, 'at a time when the newspapers of the whole country are denouncing the numerous "lynchings" which bring disgrace and dishonour upon the civilization of the 19th. Century, as direct outcomings of the lax administration of justice, and the too free use of the pardoning power, he can not in justice to the law abiding classes, neglect, or ignore'.⁶⁹ Doyle's case also underlined Governor Bloxham's desire to preserve the jurisdictional boundaries between the courts, the public and the pardon board, and to underline the distinctiveness of clemency as an executive prerogative to be used only in special circumstances.

Constructing a plausible story

Whereas judges and Board members could adopt a pragmatic and business-

like attitude towards matters of public decency in cases of rape or carnal intercourse between persons of the opposite sex and same race, they may have been less inclined to do so in 'abominable' or 'detestable' cases that were euphemistically termed 'crimes against nature'. As convictions for such offences shattered any pretence to respectability in both popular and judicial opinion, pardon applicants had to find an alternative explanation for their actions and convictions, for example, in representing themselves to the pardon board as victims of conspiracy. This could be convincing, because as Commissioner McLin admitted: 'There are prisoners in our prison today that I am satisfied are innocent men, placed there by unscrupulous people who wished them out of the way, or to avoid being punished themselves, they concocted a plea to make a scape-goat of an innocent person'.⁷⁰

From 1889 to 1914, sixty persons were convicted of 'crimes against nature', sodomy and bestiality, of which six successfully petitioned for pardon. Whereas these offences were capital crimes in the New England colonies, Robert Oakes argues that the nineteenth century witnessed increasing tolerance of illicit sexual activity of all kinds,⁷¹ culminating in the withdrawal of these offences from the capital statutes. In contrast, the late nineteenth century witnessed increased intolerance of interracial sexual activity in the Southern States. The epidemic of lynching in the 1890s was ostensibly linked to increased sensitivity to supposed violations of interracial sexual taboos, while Florida experienced increased prosecution for 'crimes against nature' in the first two decades of the twentieth century. The reasons for this - whether incidence of such 'crimes' was increasing, whether the greater concentration of population in urban areas such as

Pensacola or smaller settlements in northern Florida counties made such acts more likely to be detected and subject to prosecution, or whether the public and courts were demonstrating greater awareness of and hostility to such offences - are unclear. What is clear is that cases involving homosexual relations which came before the courts were exclusively intraracial.

'Crimes against nature' could be perpetrated against either animals or humans and carried a prison term of up to twenty years. In both types of offence, defendants used conspiracy as a central ordering device in their pardon applications in order to present the Board with a plausible explanation for their convictions and imprisonment, and to persuade Board members that they were worthy of pardon. White labourer Franklin Jeter was convicted in Fall 1888 at the Jackson County court of having 'a venereal affair' with a white and red-headed cow and sentenced to six months imprisonment. The complaint was brought by Jake Shelfer, owner of the cow, brother-in-law of Jeter, and the State's main witness. Three petitions with 128 names declared Jeter was innocent of the charge and had been convicted upon false evidence: 'The evidence against him we think a put up job by people unfriendly to him'.⁷² Twenty years later, Peter Panos also presented himself as the victim of unfriendly actions and circumstances. Thirty-three year old Greek-born Panos was convicted at the November term 1907 of the Escambia County Criminal Court of Record and sentenced to eight years imprisonment for committing a crime against nature, in a back room of his fruit and grocery store, upon seventeen-year old German ship deserter Hans Blanke.⁷³ Panos alleged that he was completely innocent of assaulting Blanke and two former employees, and that the charges were instigated by his former business

partner John Peters who had requested Panos shelter Blanke until he could return to Germany.⁷⁴

Panos's claim of unjust conviction and punishment and his application for pardon were supported by J. G. Pace of the Escambia Land and Manufacturing Company of Pensacola: 'We have had this matter up with several of the leading citizens of Pensacola, who have signed a petition to present before the honorable Pardoning Board in the interest of this man, feeling as we do - that there was a conspiracy against him, and that he is being unjustly punished'.⁷⁵ In 1908 Panos was labouring for this company at their Santa Rosa camp and several recommendations for him were submitted by camp personnel: '[Panos] has been industrious, has exhibited no evidence of any bad habits or vicious disposition, has been obedient to the prison rules and is one of the best labourers in the camp. He has never given us any trouble since he was committed to the camp, and is a man somewhat above ordinary intelligence'.⁷⁶ Before 1920, Jews and Greeks jointly comprised about two percent of the population of Pensacola and were regarded favourably because of their aspirations to good citizenship. Middle-class Reform Jews played important community roles as merchants, while 'the position of Greeks, who worked mostly with the fishing fleet or in the restaurant or grocery business, was socially, politically, and economically inferior to the Reform Jews'.⁷⁷

James McGovern describes working-class Greeks as a generally more insular group than Jews in terms of their relationship to the wider Pensacola community, but Panos was able to draw on the support of the wider community for his application for clemency. His praiseworthy character and prior reputation

as a good citizen were also emphasised in letters to the pardoning board from fellow members of the Greek community in Pensacola, for example, from Nick Apostle:

Gentlemen: In regard to Peter Panos, who is applying to your Hon. Body for a pardon, I desire to say that I have known him for several years, and that during that time he has been a hard working, industrious man, did not drink or gamble, and had never been arrested or prosecuted for crime, but attended strictly to his own business. I believe he is suffering unjustly and should be pardoned.⁷⁸

Despite the belief that crimes were committed by the criminal classes, persons identified as respectable were accused and convicted of murder, rape and crimes against nature, as illustrated by the frequent references to persons 'of previous good character' in letters and petitions, and in the comments of attorneys, judges and journalists. As a result, these traits of character could be included in the grounds for clemency. Ultimately, successful applications went beyond the strength of a plausible, well-told story, and were directly related to the structure of social and political power in Florida. If a person of previous good character could show they had renounced the behaviour that had led them to crime, or had been unfairly treated by the criminal justice system, and that they had embraced respectable society's standards, they were no longer perceived as a threat to the community and conditional pardon allowed them a trial period to prove they had renounced criminal behaviour on a permanent basis.

Panos was not the only foreign-born defendant from Escambia County who was convicted of a 'crime against nature' in the late nineteenth and early twentieth centuries, and it may be that persons of foreign descent were more vulnerable to such charges and liable to conviction, partly as a consequence of the prejudices of

local rural and small-town Southern men who sat on Escambia County juries, and their suspicions surrounding the cultural practices of ethnic communities and foreigners who frequented the port city. Italian-born sailor Frank Vicchio was convicted of two attempts to commit sodomy on twelve-year old Jon Harris aboard a trading boat in Santa Rosa Sound and later in Pensacola at the 1889 July term of the Escambia County court.⁷⁹ In a petition submitted by Dario Praggio, it was claimed that Vicchio did not understand English so could not appreciate the charges or evidence against him, had been too poor to employ a defence attorney, and had been tried for two offences at the same time before one jury without his knowledge and consent. Vicchio was therefore seeking full and free pardon for a situation in which the prosecutor had taken advantage of the defendant's poor command of English. State Attorney J. E. Yonge also noted that the absence of a defence counsel had disadvantaged Vicchio, who in his opinion was 'weak-minded'.⁸⁰

Vicchio appealed directly to Commissioner Wombwell. He stated that he had filed naturalization papers and voted Democrat in the last two elections, had a 'nice' wife and two children in Italy, and emphasised that there had been no witnesses to corroborate Harris's testimony: 'I am sure that he was prompted to swear what he did by his mother who is a very wicked and lewd woman and would stop low [sic] enough to do almost any wrong to any person however innocent they might be'. Vicchio described himself as a 'poor labouring man' and provided twenty-five names, including those of the Italian and Spanish Consuls, for Wombwell to call on as character witnesses.⁸¹ If Vicchio was unable to communicate effectively in English, it is not therefore clear who wrote the letter.

Vicchio's application for pardon was further strengthened by a statement from Escambia County Judge John C. Avery: 'The two charges against [the] defendant were tried together and there is and was a doubt in my mind whether evidence in either case was sufficient to warrant conviction'.⁸²

On 9 March 1903, British subject C. G. Keller was indicted by the grand jury of Escambia County for assaulting Osborn Peters, and subsequently convicted of committing a crime against nature nine days later. On 4 April 1903 Keller was sentenced to ten years imprisonment at hard labour.⁸³ Over two years later the British Vice Consul at Pensacola, Frederick Bonar, instructed the Pensacola law firm of Avery & Avery to take up the case, and papers were sent to intermediary G. L. Lippell.⁸⁴ At the same time, Keller's predicament had come to the attention of N. A. Blitch, Superintendent of Convicts, when he visited P. H. Baker's camp. Blitch informed Governor Broward that Keller had been convicted of sodomy but believed he was 'so drunk he knew not what he was doing, and that he has been punished sufficiently'. Drunkenness as a mitigating factor rarely appears in applications from female convicts as it undermined any allusion to proper womanhood, yet was a remissible or pardonable excuse for men. In Blitch's opinion, Keller would make 'a good citizen if liberated'.⁸⁵ Camp owner P. H. Baker echoed these sentiments, emphasised that Keller had been a model prisoner during his incarceration at Baker's stockade at Campville, and while he would be sorry to see Keller pardoned he believed he had received sufficient punishment for his crime.⁸⁶ Prison records are strangely silent on the issue of homosexual practices in convict camps. It is not clear how offenders convicted of such offences were received; whether they were segregated (most were white)

and shunned or able to establish themselves relatively comfortably within the prison labour hierarchy. Official records do not reveal whether such offenders or pardon applicants continued to engage in 'unnatural' acts while incarcerated. Such evidence would undoubtedly contradict any assertions of reformation or claims of unwarranted conviction.

Duty to retreat

Under English common law, self-defence was interpreted strictly: the slayer must have tried first to do everything possible to escape, and must have had his back against the wall. Richard Maxwell Brown argues that one of the most important transformations in American legal history and of the American mind occurring in the nineteenth century, was the repudiation of the English common law tradition in favour of the American legal justification of 'no duty to retreat', a transformation that paralleled the rise of the independent United States. In the context of the nineteenth-century South with its 'vacuum of justice' and suspicion toward the written and abstract law, Ayers observes: 'Manhood came to be equated with the extralegal defense of one's honor, a manhood made manifest in control of one's woman and in unquestioning respect from one's peers'.⁸⁷ Duty to retreat in the United States was regarded as a legal rationale for cowardice, because a 'true man' who was without fault stood his ground regardless of the consequences. This belief was sanctioned in State Supreme Court rulings in Ohio and Indiana in the 1870s, and which Brown views as evincing 'a concern for the values of masculine bravery in a frontier nation'. In November 1905, a Minnesota Supreme Court judge 'held that the American combination of frontier conditions

and lethal firearms had outmoded the duty to retreat in innumerable situations, an interpretation which supreme court justices in other states found persuasive'.⁸⁸

The 1900s saw a largely successful assault on the English common law tradition, as only a minority of states continued to uphold the traditional duty to retreat; these included Florida. The American doctrine of 'no duty to retreat' was proclaimed in federal law in 1921 by United States' Supreme Court Justice Oliver Wendell Holmes who regarded the right to stand one's ground and kill in self-defence as a great civil liberty.⁸⁹ In local Florida communities and counties, popular opinion did on occasion sanction violent self-defence by the 'true man'. Brown observes: 'Sometimes the official value system sanctioned by the leaders of society and the illicit value system as practiced by the people converge in a way that results in even more widespread approval of violence'.⁹⁰ While Florida residents did not necessarily habitually engage in gunfights, they did arm themselves by habit and were experienced gun handlers who were ready to use their weapons under provocation, thus while self-defence might not be formally recognised in Florida law, it did carry a degree of popular legitimacy when it could be demonstrated that a personal dispute had been settled in a proper and honourable way.

Defenders of popular custom and decentralised government increasingly came into conflict with a criminal justice system undergoing centralisation and expanded authority. Resentments over the unwarranted or excessive power of urban police officers could surface in criminal trials at the same time as extra-legal punishments such as lynching were being tolerated. In May 1896, at the Circuit Court of Duval County, Jacksonville policeman James M. Kelly was found guilty

of murdering twenty-three year old white mechanic John B. Tallent on Christmas Night 1895. It took the all-white all-male jury twelve minutes to convict Kelly of first degree murder with no recommendation to mercy. The *Times Union* later claimed that Kelly's case 'was railroaded through in less than five hours'.⁹¹ On 8 June 1896 Judge Rhydon M. Call sentenced Kelly to hang: 'The same coolness that marked Kelly during his trial was in evidence while he was being sentenced this morning. He replied that he had nothing to say why sentence should not be passed upon him'.⁹²

During the previous ten years Jacksonville's police force had undergone far-reaching changes. The election of 1887 resulted in the selection of a City Council with five black aldermen and African Americans were able to gain a 'semblance of equality' as blacks were elected to the positions of municipal judge and police commissioner, and comprised thirteen of the thirty-man police force. Edward Akin describes Jacksonville in the 1880s as a 'biracial political community - not just a white man's province maintained by manipulation of the black man's vote'. In the late 1880s African Americans were able to hold on to some measure of political power as victory in the municipal elections for the Citizen's Ticket, a political coalition of reform Democrats, Republicans, African Americans and Knights of Labor, brought them to positions of power.⁹³ Victory was short-lived as a conservative white counterattack encouraged the State legislature in 1889 to introduce House Bill No. 4 which abolished elected municipal government in Jacksonville and gave the Governor the power to appoint city council members. An all-white city council was appointed and an all-white police force assembled. The return of elected government in 1893 did not change this.⁹⁴

Jacksonville's sixth ward continued as an African American political stronghold in the first years of the twentieth century. George E. Ross, 'a cigarmaker by trade and a lawyer by profession', remained on the Jacksonville city council as the lone black representative until 1907.⁹⁵ It was against this background of recent conflicts over the centralisation of political authority and the erosion of municipal autonomy, and amid latent hostility toward a new urban police force, a visible demonstration of increased state power, that Kelly's actions and character were popularly judged. Further, as Roger Lane observes in the context of nineteenth-century Philadelphia: 'Nineteenth century policemen got little of the respect and none of the prestige that their successors have enjoyed over the past generation. The men worked alone; it was difficult to summon help; and any arrest might be an invitation to a fight and later a law suit. Officers were routinely judged guilty of assault and sometimes of murder committed in the course of duty'.⁹⁶

As a white, lower-middle class Irish-American, Kelly fitted the stereotype of the nineteenth century American urban police officer. He was described as 'a handsome fellow, and as neat as a pin. He is about 30 years old . . . he has large deep-set and thoughtful eyes, a firm chin and jaw, a healthy complexion and a rather jaunty, brown moustache. In fact, his whole make-up had nothing in it of the murderer'.⁹⁷ Additional tensions surrounding the prosecution of this case originated in the turbulent events of the early 1890s and the continued allegations of police brutality and intimidation that had dogged police forces in Florida's major cities since the 1870s.⁹⁸ Tallent's antemortem statement, recorded on 27 December, was a decisive factor in the subsequent conviction. Tallent and three

friends, all employed as mechanics in St. Augustine, had travelled to Jacksonville for Christmas. After leaving a saloon at the corner of Ward and Bridge Streets, Tallent alleged that Kelly made an unprovoked attack, 'shoved him off the sidewalk', struck him on the side of the head with a pistol and shot him four times, twice after he had collapsed inside the door of Bettelini's cycle agency.⁹⁹ In fact Kelly had fired three shots, hitting Tallent in the right leg, the torso, and to the right of the spinal column which resulted in paralysis.¹⁰⁰

Kelly was not on duty or in uniform on Christmas night 1895, but his attorney, A. M. Michelson, 'based his defense upon a rule of the police force requiring officers when not on regular duty to still do duty should they chance to come upon a violation of the city's ordinances'.¹⁰¹ Kelly claimed Tallent and friends had been obstructing the sidewalk and 'behaving boisterously while ladies wished to pass', that Tallent struck him on the chin when he requested they allow the ladies through, and that he was assaulted by Tallent's friends who threatened to 'cut his head off' when they discovered he was an off-duty police officer. The defendant reiterated his belief that the men were armed with knives, and Kelly insisted that Tallent had drawn his knife and was advancing toward him when he fired in self-defence during a subsequent scuffle.¹⁰² Kelly stressed his actions were prompted by his desire to protect the 'ladies' from lower-class harassment, that he fired in self-defence, and had immediately given himself up to his police colleagues. He also expressed regret for the shooting. The incident was however witnessed by several independent bystanders including George N. Adams, an employee of the cycle agency, who substantiated Tallent's account.

Immediately after the jury reached its verdict, Michelson filed a motion for

a new trial for his client on the grounds that the verdict was contrary to the law and that one of the jurors, J. C. Turner, 'was utterly incompetent and disqualified' because of his prejudice toward Kelly, who he mistakenly believed had already killed one man in South Carolina and was wanted in Georgia for another homicide.¹⁰³ Six weeks later Judge Call signed Michelson's bill of exceptions and Kelly's case went to the Supreme Court.¹⁰⁴ Tallent had died at his parents' home in St. Louis, Missouri, on 29 January 1896, after his request made from his death bed that he be allowed to die near his family was granted.¹⁰⁵ In his 'Brief for the Plaintiff in Error' Michelson argued that three doctors had testified that the wound to the spinal column would have been fatal but could not say when death would occur, thus it was Tallent's removal to St. Louis that had hastened his death, and there was therefore only circumstantial evidence to connect the cause of death to the wound. Furthermore, if death had occurred a year after the shooting, the statute of limitations meant the crime could not have been classified as murder.¹⁰⁶ State Attorney John Carter countered that the three doctors had also given permission to transplant Tallent to St. Louis as the trip would have no effect on the eventual outcome. They were certain that Tallent was going to die; he was paralysed from the waist down and any medical operation was adjudged to be useless.¹⁰⁷

Secondly, Michelson argued that because the shooting had occurred during a fight, the absence of premeditation or wilful intent meant the conviction should be reduced to manslaughter, and cited numerous cases to support his argument.¹⁰⁸ He maintained further that because Kelly was a Jacksonville police officer 'on duty' at the time of the homicide, 'more latitude' was permitted in

evaluating the verdict against the weight of evidence, thus justifiable homicide should also be considered.¹⁰⁹ In the 'Brief for the Defendant', Attorney General W. B. Lamar countered that the facts and evidence did support the conviction for murder: Kelly's life had not been in danger, therefore he had no excuse for shooting Tallent, and he rejected the self-defence argument.¹¹⁰ Kelly's conviction was affirmed by the Supreme Court on 14 April 1897. James M. Kelly had been sentenced to death on 8 June 1896 along with Enoch Doyle and Robert Henry. The convictions of all three were defended by Attorney General William B. Lamar when the cases were reviewed by the State Supreme Court. All three convictions were affirmed and all three defenders petitioned the Board of Pardons for commutations to life imprisonment. W. B. Lamar was of course also a member of the pardon board.

Dr. John L'Engle was prominent in the campaign to secure a commutation for Kelly that had begun immediately after the capital conviction and sentence were affirmed:

Mr. Kelly, I am informed by the Chief of Police of this city, was an efficient and manly officer who tried to do his whole duty, whether in uniform or out of it; that his fault was, that he had an impulsive temper and when aroused, was violent. My impression is, that he did occasionally drink, but never to excess . . . I think he should be punished as a warning to others, but I do not think his crime merits death, if death is the penalty for premeditated murder.¹¹¹

Another formidable champion of Kelly's case was Mrs. Sara L. Reed, Superintendent of Jail Work of the Jacksonville Women's Christian Temperance Union, who threatened 'to besiege the Board' if it failed to commute the death sentence:

I write to you in regard to the case of James Kelly, now in the

county jail in this city under sentence of death. A petition has already been circulated and signed by over six hundred persons asking for commutation of sentence. I have talked with many business men about the case and have yet to find one intelligent man who believes he committed a capital crime. I do not understand why he was denied a new trial, for it was certain that the verdict was not in accordance with the evidence which did not show a premeditated murder. Some of the jury may not have understood the nature of a capital crime or punishment as in the Driggers case, where one of the jury said before several witnesses, when asked to sign the Drigger petition, that he was told if he signed that paper he would suffer capital punishment for twelve months. I find that many persons have forgotten the circumstances in the Kelly case, and if your honorable board does not see fit to honor the petition now before you, I will have a statement of Kelly's case published, and am confident that our citizens will not ask a severe punishment for the part that Kelly took in that sad affair.¹¹²

Two weeks later it was reported that affidavits to bolster Kelly's case were being 'prepared' and forwarded, along with the petitions that had been circulating among Jacksonville citizens, to the Board of Pardons: 'There is a possibility of the pardoning board calling for the evidence in the case to see how it corresponds with the affidavits'.¹¹³

At the Board meeting of 8 June 1897 members voted to commute the death sentence against James M. Kelly to life imprisonment: 'It was largely through the personal and zealous efforts of Attorney A. M. Michelson and Rt. Rev. Father Kenny that a commutation was secured'.¹¹⁴ Three days later Kelly was transferred to Neal's convict phosphate camp near Lexington, from which he attempted to escape five months later, armed with a pistol 'which he and another convict had secured from the wife of one of the prison guards' by appealing to her 'sympathetic nature' and convincing her of his innocence, but the planned breakout was discovered and Kelly was 'placed in irons'. Prior to this, Kelly had allegedly been considered 'very peaceable and quiet'. 'It is supposed that by

brooding over his condition and thinking he was in the penitentiary subject to the hardest kind of labor for his whole life, he became desperate, and willing to test the slimmest chance for freedom, for which he hoped and fought so hard while confined in the County Jail in this city'.¹¹⁵ Kelly's friends and supporters were said to be surprised by the news, believing that he would make his good prison record the basis of any future pardon application.

Attempted and successful escapes did not necessarily preclude a pardon applicant from receiving a conditional release. Less than four years after his attempted escape, on 17 April 1901, Kelly was granted a conditional pardon 'through the influence of Dr. John C. L'Engle, Father Kenny, ex-Governor Fleming and others [including Sister Mary Ann]'.¹¹⁶ Kelly had also enjoyed crucial support from a member of the Board of Pardons, Lucien B. Wombwell, the Commissioner of Agriculture. Kelly and Wombwell were in direct communication over the former's pardon application by late 1900: 'Your letter of the 25th inst. received. I will do all I can in your case if it comes before the Board of Pardons before I cease to be a member, I will go out on the 8th of January'.¹¹⁷ Kelly, now at Floral City, acknowledged the letter from Wombwell in a separate communication to John C. L'Engle, that ended with the supplication: 'May God in his infinite wisdom crown you with success is the prayer of your humble servant'.¹¹⁸ Within two months of his release Kelly, who had been working as a watchman for the State Bank of Florida, was back in the news headlines, wanted in connection with an assault at the boarding house at which he was living. Kelly shot at fellow resident George Jones, in the midst of a heated argument, leaving a flesh wound on Jones's cheek, then struck the unmarried daughter of the

housekeeper on the jaw with his revolver. A major police hunt was being conducted throughout the city and Kelly was still at large when the *Times Union* went to press.¹¹⁹

Kelly's position as a Jacksonville police officer, a representative of the increasing centralisation and bureaucratization of the forces of crime control in Jacksonville, Duval County and the State of Florida, influenced jurors' attitudes toward both his actions and his character. His social position appears to have increased rather than diminished his moral and legal accountability for his actions, hence the jury's rejection of the argument that even when a police officer was off duty he should intervene if he felt the law was being violated. Anger had to be presented in an acceptable manner or context if a jury was to be convinced that it constituted a mitigating factor in the explanation for a homicide. Kelly could not claim his actions amounted to 'justifiable homicide' as they did not occur in the discharge of his legal duty, he was not apprehending an escaped felon or under order from a court to arrest Tallent for a felony. Rather, he had a duty to retreat; he did not have the right in popular opinion to stand his ground regardless of the outcome or consequences as his back was not against the wall and escape was possible. The Jacksonville jury did not sanction violent self-defence by a 'true man' in the Kelly case, because they regarded his actions in assaulting Tallent as invalid, even dishonourable. In the eyes of the jurors, Kelly had fired in anger and perpetuated a cowardly attack on a boisterous and disrespectful, but not menacing or intimidating, visitor to the city. It was Kelly's personal contacts with a member of the Board of Pardons, his race, and his position that rendered him a fit subject for mercy. The personal intervention of Commissioner Wombwell and the

acceptance by Board members that Kelly had been punished sufficiently for a lapse of professional judgement ensured that a conditional pardon was granted.

While southern whites commonly believed that African Americans would not work unless coerced, black convicts had a reputation for obedience and good discipline. In contrast, white male convicts carried a reputation for incorrigibility, insolence and ill-discipline that increased over the years in line with their enlarged presence in the State Prison System. In 1897, Kelly was one of fifty-seven white male convicts in Florida who was convicted and sentenced to hard labour for a term of years. Ten years later a fifty percent increase in such committals, from fifty in 1907 to seventy-five in 1908, particularly for crimes of larceny, forgery and embezzlement, caused Commissioner McLin particular irritation:

I think this can be explained on the ground of a floating population that has been drifting to our State for the winter season, many of whom, no doubt, follow the tourist population with the express purpose of preying upon this class of citizens by stealing, robbing and, in other ways, carrying out their natural criminal proclivities.¹²⁰

McLin termed many white male offenders 'young men with honorable parentage' who were 'frequently of a better type of citizen than one would expect to find in the penitentiary' but offered no explanation as to why they should be invested with 'natural criminal proclivities'.¹²¹

The establishment of the State Prison Farm and division of convicts according to grade, race, gender and age further highlighted the perceived differences between ill-disciplined white male convicts and subservient and obedient African American male prisoners:

There are men at Bradford Farms naturally bad, an incorrigible element, mostly young whites, disposed to defy the rules, and more of them are seen with shackles on their ankles than any other class.

It is the exception to see a negro wearing shackles. Most of the negro prisoners are laborers and the worst of the whites are classified as having no trade.¹²²

It is difficult to define the position of white male convicts in the informal hierarchy of convict labourer, from incorrigible to trusty, that characterised conditions of life and labour in turpentine and phosphate camps, the prison farm and road camps, or their relationship to the predominately African American convict population (although camps were to be racially segregated after 1910). Many white convicts appear to have been trustees and may have enjoyed distinct advantages in their ability to establish the necessary rapport with guards and captains to be placed in a position of trust and responsibility. The positioning of white labourers in camps with or nearby African American convict labourers and in extractive industries where labour was, in popular opinion, deemed to be degrading for whites yet suitable for African Americans, may have served to increase white male convicts' feelings of anger, resentment and shame, and accentuated their fear of further social degradation and isolation.

Convicts' support networks

As a literate white convict Kelly more readily enjoyed certain lines of support and access to influential persons than illiterate and black convicts. Pardon applications provide a rich source of narrative on persons incarcerated in Florida's State Prison System and the networks of support available to convicts. In Jacksonville, members of Catholic Orders provided essential emotional solace and support to Catholic and non-Catholic prisoners in the Duval County jail; for example, Father Kenny was active in persuading Board members to pardon Kelly.

William J. Kenny was the third of three pioneer bishops to South Florida between 1868 and 1914, and the first American-born. He was ordained at the Cathedral of St. Augustine in 1879, served as priest of Jacksonville in 1885, Vicar General from 1889 to 1901, then Administrator of the Diocese in 1901, and was appointed Bishop of St. Augustine in 1902, serving until his death in October 1913. During his eleven-year ministry he is credited with initiating a more efficient administrative organisation, of intensifying recruitment and missionary efforts among both black and white non-Catholic Floridians.¹²³ Such missionary efforts could be dangerous. During one mission to non-Catholic and Catholic blacks in Madison in 1908, in a county recently blighted by lynchings, a Father Breshanan received a personal threat, so kept a loaded revolver concealed on his person and a layman guarded the front door with a shotgun as Breshanan preached.¹²⁴ Catholicism was tolerated in Florida's urban communities, especially Jacksonville and Tampa, which contained large non-Protestant communities, in contrast to rural Protestant north and central Florida counties.¹²⁵

For over forty-five years Sister Mary Ann of the Sisters of St. Joseph provided material care and spiritual comfort for Jacksonville's destitute and sick, and was known as the city's 'Angel of Mercy'. She arrived in New York in 1848 as a twenty-year old emigrant from famine-stricken Ireland, migrated to St. Augustine in 1859 where she tended to sick and wounded Confederate and Union soldiers during the Civil War, then moved to Jacksonville in 1869. As she never learned to read or write, she lacked the formal education necessary to teach, so she defined her mission as providing care for the poor, for orphans, and for prisoners. She was a frequent visitor to the county jail where she befriended condemned

murderers such as Robert Henry and Alexander 'Kid Charley' Sims. She brought these men special meals on the eve of their executions, provided them with new black suits for the occasion, prayed with them, accompanied them to the gallows and brought them emotional solace. In February 1902, in recognition of her efforts, she received a small wooden box, a personal token, hand-carved by six men convicted of murder and awaiting sentence.¹²⁶

Urban African American convicts were also cared for by individuals and organisations within the black community. Eartha Mary Magdalene White, founder of numerous welfare, educational and community organisations at the centre of Jacksonville's African American community, including the Clara White Mission (named after her mother) and the Prison Visitation and Rehabilitation Program, was Jacksonville's other 'Angel of Mercy'. She also tended to the sick and wounded during the Spanish-American War (as did Sister Mary Ann), serving soup to the sick in hospital tents and providing nursing care. For more than forty years she visited the Duval County jail, held meetings and rendered personal services to inmates, and provided them with further material and emotional assistance after release.¹²⁷ Both Sister Mary Ann and Eartha White drew their pool of energy from their faith and spiritual outlook. For all denominations, the late nineteenth century was a period of church building, missionary and evangelical activity, much of it undertaken by women, often from prominent Florida families.¹²⁸ The Women's Christian Temperance Union provided notable assistance to convicts' families. Mrs. Sara L. Reed, an active 'whiteribboner' appears frequently in reports of campaigns to secure the release of convicts from Duval County jail.

In their efforts to secure the release of convicted and imprisoned husbands and lovers, sons and brothers, women made regular documented appeals and impassioned pleas to governors, board members, attorneys, judges and other persons of perceived influence. In two letters written on consecutive days, Mrs. Vassiliki Panos, 'a very respectable old lady', requested clemency for her 'only son and my only support in my miserable old age' for a crime 'which was created by mere wickedness and cupicity [sic] in the brain of one of our countrymen and his own partner' and:

I beg your Excellence to understand my position and read in the bleeding heart of a mother whose only son is unjustly persecuted in a foreign place, far from his country his mother and friends; and imprisoned for a loathsome action which he has never committed. Your Excellence alone can replace, for my unfortunate son his country and his mother and condescende [sic] to console and save him . . . All my hope is in God and you. Please be a father to him, save him and I will spend the rest of my life to pray unto the Lord for you.¹²⁹

Wives, even those who might be breadwinners in their husband's absence, or eminently capable of running the household, used the language of humility and subjection to appeal to the Board members' sense of *noblesse oblige* and chivalry as southern gentlemen required to protect the weaker sex.

Some families felt the loss of the male breadwinner more keenly than others. In late 1915 Gudelia Howsley and her three children were in San Antonio, Texas, where they had appealed to the Wesley Community Home for shelter and work, but this had not been possible so the family had been split up: the children were placed in an orphanage while the mother worked as a maid in the Wesley Community Home in West Tampa. Head resident Lillie F. Flax appealed to the Board for clemency for Guil Howsley, 'for the sake of a united family . . . in

contrast to the broken home and the expenses to two states in providing for this divided family'.¹³⁰ Six months later Gudelia Howsley implored Judge Gibson to intervene to secure clemency for her husband, Guil Howsley, then serving a ten-year prison sentence for unlawful carnal intercourse:

I have suffered a great many hardships since my husband went away. I have seen my children taken away from me and put into homes for the friendless, and I have gone into peoples' kitchens to work to get enough money to live on. You may remember that my husband earned enough to keep us well when he was free, and he has suffered a great deal . . . I have sold what little I had to get the money to come over here in the hope of being able to see him liberated and reunite my family . . . It may show you how destitute I have become and how much I need the sympathy and help of my husband in the care of these children when I tell you that I had so little money after buying the ticket [from San Antonio to Tallahassee] I was driven to the extremity of selling my ring to a stranger on the train to buy food for the child.¹³¹

While Gibson was ambivalent about supporting Howsley's plea for pardon, he did suggest to the Board, 'in the event you grant him a pardon that it should be conditioned that he provide for his wife and three minor children'.¹³²

The pardoning board secretaries reiterated that Governors were neither able nor willing to bend the rules which regulated the pardoning process or arbitrarily to overturn the decisions of juries and judges. For example, in response to one wife's appeal, Lang declared: 'While the Governor sincerely sympathises with you in your troubles, and would gladly do anything he could legitimately to alleviate your sorrow and distress, yet his duty to the State restrains him from complying with your request to liberate a self confessed criminal, even though such criminal be your husband for whom you plead so earnestly'.¹³³ The conservative priorities of the men who sat on Florida's Board of Pardons and who ran the state's criminal justice system - to preserve order, to protect respectable

citizens from the menacing activities of the criminal classes, and to mete out retributive and deterrent punishment - were underlined most clearly in letters to wives and mothers. Pardon board members could occasionally accede to the requests of suppliant women and excuse the occasional remorseful woman for her crime without giving in en masse, a situation which might end in the need to concede legal and civil rights to women. As a result, the Governors' first duty was publicly defined as that of ensuring the fair and proper administration of the criminal justice system and of protecting the innocent. At the same time they selectively used the discretionary clemency powers to reinforce gender and class hierarchies. In granting a conditional pardon to benefit the innocent and suffering dependents, in effect for reasons of pity, Barnett accused clemency authorities of 'transforming the pardoning power into a means of poor relief'.¹³⁴

To ensure success, pardon applicants usually required access to a network of information and support that went beyond humble and suppliant wives and family members. Letters and petitions from influential persons carried weight with the Board, especially those from former employers, local businessmen, church ministers, local landowners, and politicians, and, of course, individual Board members as in the case of James Kelly. Ayers observes that such letters and petitions from convicts and their supporters 'give glimpses into the more obscure corners of Southern society'.¹³⁵ Sykes Williams' pardon file contains a petition with forty-eight signatories, including eight day labourers, two female teachers, twelve farmers, eighteen ministers of religion, and two newspaper editors. As many female convicts had been domestic servants prior to incarceration, recommendations from camp captains or former employers were particularly

important:

Dear Sir, Belle Williams, a negro convict at Rye, Fla, asked me to write to you relative to her. She worked for me about one year, and a more faithful negro I never worked. I always let her sleep in a little house in the yard to which there was no lock, from which she could have left any time, but she never gave me any trouble in any shape. In fact Mrs McKenzie carried her as a nurse to Tampa, while on a shopping trip, and left the children in her care at the hotel, feeling sure that she would be there on her return, she was. Will gladly do anything I can for you in her case.¹³⁶

Endorsements from camp supervisors refer to female convicts in enthusiastic terms but fundamental questions about the nature of these relationships remain unanswered. Were they based on economic coercion and sexual exploitation? Were they characterised by mutual dependency? The testimonies of female convicts in Alabama in the last third of the nineteenth century suggest that, 'although women prisoners were clearly vulnerable to rape, cruel punishment, and exploitation, they also valued freedom of movement and the relationships they established with male prisoners and free men during their time in prison'.¹³⁷

Trust was placed in the judgements of the judge who presided at the trial and the prosecuting attorney, as well as the jurors and other court personnel. From 1897 applicants seeking pardon had to provide recommendations from both the prosecuting attorney and sentencing judge. When pardon applications were passed over for further consideration, it was usually because the Circuit Judge and State Attorney were to be consulted on whether the applicant was a suitable candidate for clemency. One reason for the necessity of such recommendations was given in 1911:

After the Board had been deceived several times, by acting too hastily on applications for pardon, it finally became the fixed policy of the Board to refer the statement of facts presented, where no certified copy of the evidence at the trial is obtainable, to the

various officers of the court and to citizens who can be relied upon to furnish proper information. Upon all the information thus obtained, the Board either grants or denies the application for pardon, as the circumstances demand.¹³⁸

Such recommendations were also increasingly necessary as old planter-tenant bonds were stretched with economic development and shifting populations. Witnesses at the original trial or to the crime were rarely re-interviewed. But as Wolfgang observes, the opinions of the judge or state attorney involved with the original trial and prosecution 'about the merits of a particular petition for commutation are based in part on their acquaintance with the offense and the offender at the time of the trial. Their separate judgements at the time of application before the Pardon Board form a composite evaluation based upon recollection or upon re-examination of the case'.¹³⁹ Judges could not always remember a particular offender or recollect the details of a particular case, thus their opinions or judgements were not always wholly accurate or reliable. Jury members also relied on their recollection of evidence and events in a particular case. Their endorsements for pardon applications were volunteered or gathered by lawyers, and provided jury members with the opportunity to reevaluate their original decision, either in light of evidence discovered after the original trial or for reasons of personal conscience.

In contrast, prison personnel offered judgements that were more contemporary and perhaps of more value to the Board's deliberations, but often regarded with suspicion because of the differences in class between, for example, camp guards and pardon board members. Yet, prison personnel, in contrast to pardon board members, had actually met the applicants. Practically every application submitted to the Board was accompanied by letters or

recommendations from camp or prison guards and captains attesting to the applicant's honesty, integrity, good behaviour and worthiness of pardon. Board members might have questioned whether such recommendations were bona fide or counterfeit. As over sixty percent of convicts were illiterate and reliant on others to write such letters, and a degree of literacy was required of prison guards after 1903, such conditions undoubtedly gave rise to a distinct and potentially very profitable prison industry.

Pardon files contain petitions with large numbers of signatures from 'leading citizens', or 'prominent people' or 'best citizens' who were usually white. Petitions were frequently the subjects of controversy and it is not clear how much notice the pardon board took of them. In 1895 Colonel Moore had advised Governor Mitchell: 'The Board of Pardons also requires a petition from the citizens of the neighborhood where the offence was committed in behalf of the convict. This the convict has but little chance to look after, and the agent not acquainted in those sections, has considerable trouble in getting such petitions'.¹⁴⁰ Applicants who employed their own attorney appeared to have more success in supplying the pardon board with the necessary petitions. Attorney Jeffrey Browne wrote to the Board requesting pardons for his clients Frank and Willie Baker, who had previously owned a coffee shop in Key West and had been convicted of assaulting and kicking one of their customers (their shoes are listed as the weapons used) in July 1901. Browne characterised the victim, James Johnson, as 'a treacherous, desperate character who it is strange has not been killed before this'.¹⁴¹ He informed the Board that the petition accompanying the application for pardon, 'contains the names of nearly every prominent merchant;

city, county and United States official; and members of the bar and other professions. In circulating this petition no effort was made to make it general. Only such persons whose standing in the community would probably be known to your honorable body were asked to sign it. But if this is not sufficient, a general petition containing a thousand names can readily be obtained'.¹⁴²

Similarly, the pardon file for Gustavas A. Hood contains several petitions with a collective total of over 300 names (one petition contains seventy-seven names in the same handwriting). John C. Hood informed Governor Perry: 'I drew off all the names myself from the petitions that were circulated from the fact that they were signed in pencil and some names in such hand write [sic] that if a person were not acquainted with the persons, the names could never be made out. It has been suggested to me that there might arise a suspicion as to the genuineness [sic] of the signature therefore, I have thought best to send up the original papers'. He further advised Perry that he could enquire of Holmes County citizens and the Clerk of the Circuit Court as to the authenticity of the names (the original petition still has eleven names in the same handwriting).¹⁴³ Petitions from cities were more likely to contain female names or signatures. Both letters of recommendation and petitions provided important routes for influential people to intervene in and question various aspects of the criminal justice system. Supporters of Frank Wynn focused on the two year sentence for manslaughter that he received: 'The judge evidently thought there were either doubts or strong extenuating circumstances in favor of Frank Wynn Jr. case or he would not have given him so short a sentence as he did'.¹⁴⁴ While letters and petitions were usually addressed directly to the Governor or the pardon board as a whole, some

authors solicited the personal intervention of individual Board members. The constitutional limitations on the executive office and the political context of a highly factionalised Democratic party meant that Cabinet officers could operate independently of the Governor, could develop close working relationships with the dominant rural, largely North Florida representatives and senators, and develop close ties with local county officials, 'traditionally the most powerful figures in the state'.¹⁴⁵

As pardoning files reveal, black offenders sought protection and help from white men, in the form of recommendations from employers, convict camp supervisors, camp guards, as well as judges and other prominent white citizens. Black women appealed to middle class white men and women's sense of *noblesse oblige* to use their influence and connections to effect their release from the convict lease:

Gentlemen: Mrs. Alvarez a cultured christian [sic] lady of Starke, who is entirely disinterested and accuataed [sic] only by a sense of humanity and justice to a friendless convict has asked me to endorse the application of Jossie Howard for pardon. Mrs. Alvarez is a woman of most excellent judgement and has talked several times with the applicant and assures me in her opinion Jessie Howard is very humble and contrite and that if pardon will lead a law abiding life having confidence in Mrs. Alvarez's judgement I would recommend it on this alone.

But after Mrs. Alvarez made the request I investigated that matter and find the evidence was conflicting as to whether or not the applicant acted in self-defense but the jury found her guilty of murder in the second degree and I had no alternative under the law but to sentence her for life, if the law would have permitted, I would not have sentenced her to more than seven and more probaly [sic] five years and in view of the fact that she has been in prison for about eleven years I most earnestly ask that you grant her a conditional pardon.¹⁴⁶

Paternalism was demonstrated towards 'good negroes' and 'model prisoners' of both races, but indifference or hostility was exhibited toward assertive and

threatening black and lower class white men and women.

The very nature of executive clemency and the regulations governing pardon applications invited various forms of corruption. Not all recommendations from prominent citizens, camp supervisors and prison personnel were necessarily written out of a sense of paternalism, sympathy, humanity or philanthropy. In 1900 Arcadia attorney, C. C. Morgan, who was 'honor bound to call the attention of the Board to the fact that it is liberating entirely too many criminals from DeSoto County', charged that local judges and bankers would, for a 'small fee' speak favourably of any applicant before the pardon board.¹⁴⁷ Twenty years later, African American convict, John Henry Rogers, claimed to have paid William C. Hodges fifty dollars to secure a pardon and had given an undertaking to work for Governor Catts to pay back the 'bribe' at eight percent interest. Governors were also not immune from bribery attempts or accusations. In 1899 Floral City convict labourer, Henry Webb, offered Governor Bloxham fifty dollars to grant him a pardon.¹⁴⁸ In 1920/1921 in the midst of federal investigations of Governor Sidney J. Catts, several prisoners testified that bribery and corruption surrounded the pardon application process. For example, J. J. Coleman, then serving a life sentence for the murder of a Bay County Deputy Sheriff, claimed to have paid another prisoner the sum of seven hundred dollars and had been granted a pardon within a matter of months.¹⁴⁹

As a prisoner did not attend a pardon board hearing, and pardon board members were unlikely to have met the applicant, highly favourable endorsements carried weight, but could also mean that political determinants played a disproportionate role in the process. In their recommendation that Frank Wynn be

pardoned, Dickinson and Erwin, Dealers in Staple and Fancy Dry Goods, informed Governor Bloxham:

[Wynn's] father Frank Wynn Sr is one of the best darkies in the county, he has always voted with the whites a straight democratic ticket ever since he has been voting. He voted with straight democrats when the colored peoples would almost cut the acquaintance of a negro who voted a straight Democrat Ticket.¹⁵⁰

Such overt appeals to the political affiliations of the Board members could backfire. Pardon board secretary C. A. Finley informed W. D. Butler of Chipley that he was returning the papers for convicted rapist E. D. Hewett because the petition contained the line: "He has always been a good substantial democrat, always supporting the full Democratic ticket." Finley advised Butler to remove this sentence if he wished the Board to consider the case further: 'The Board instructs me to say that the insertion of such ground implies that political motives would influence them in the discharge of official duty, and that they will not consider an application based upon such ground'.¹⁵¹ Board members were however disposed to consider applications based on medical or humanitarian grounds.

Medical grounds

Disease, chronic fatigue, medical conditions including muscular or respiratory ailments, bone deformities or mental illness occurring during incarceration could have the result of increasing the retributive or deterrent effect of the original penalty by exacerbating the physical hardships of incarceration, so convicts appealed for release from prison to relieve them of their suffering. Barnett observed: 'There is a sort of prevailing notion among the people, or some

classes of them, that any prisoner ought not to die in prison, but that he should be released whenever his illness is believed to be fatal'.¹⁵² Occasionally, the plight of individual convicts came to the attention of Supervisors of State Convicts. Prisoners at a camp in Floral City wrote to Governor Bloxham in January 1900 to complain of bad treatment, insufficient food and clothing, and a whipping if they complained to a visiting investigative committee. They also drew Bloxham's attention to the condition of Ben Matthews who, they wrote, was suffering from breast cancer.¹⁵³ Supervisor R. F Rogers, instructed to investigate these charges, reported a month later that he paid special attention to Ben Matthews or Massey who had syphilis; Matthews was not required to perform heavy manual labour, but 'sits on a stool under a shed and picks off of the belt any imperfect rock, such as sand, flint, or lime, and throws from the genuine phosphate'.¹⁵⁴ Given the physical conditions of convict life and labour, and the impotency of state convict supervision, it was hardly surprising that the vast majority of pardon applications included medical reasons.

Convicts able to submit evidence of physical frailty, disease and illness could use these as the grounds for pardon, to play on the humanitarian sensitivities of convict supervisors and Commissioners of Agriculture, use economic arguments to appeal to camp managers, and manipulate the sensitivity of prison authorities to penal mortality rates. For example, Jossie or Josephine Howard received a conditional pardon with immediate effect at the Board meeting of 28 August 1917: 'It being shown to the Board that this applicant is now suffering from tuberculosis and her confinement with other prisoners being a menase [sic] to them; that she has served more than eleven years of her sentence during which time her prison

record has been good; that her application for pardon has been endorsed by the State Prison Physician and the Superintendent of the Prison Farm'.¹⁵⁵ At the Board meeting of 22 September 1914, Anna Caldwell was granted a conditional pardon to take effect on 10 October as 'two of the Prison Physicians having certified that she has consumption and has had numerous hemerrhages [sic] and that her further confinement in prison will not only hasten her death but will endanger the health of other prisoners'.¹⁵⁶ It seems strange, therefore, to find the next sentence proclaiming that she could secure employment upon release.

As tuberculosis was a highly contagious disease and could affect quickly vulnerable convict populations lacking proper medical care and nourishment, the threat to the health of other prisoners often outweighed other considerations and necessitated the permanent removal of such prisoners from the prison system. Other convicts were simply a financial burden to leasees and the latter were unwilling to shoulder the financial burden of unproductive dead hands. Will Henry, convicted of second degree murder in 1901 in Wakulla County, had served sixteen years of a life sentence when he was conditionally pardoned on 18 July 1917 as he was 'now suffering from a wound inflicted [on] him before going to prison' and 'his long service at hard labor having seriously impaired his health'.¹⁵⁷ Bud Thomas was granted a conditional pardon in March 1914 as he neared the end of a three year sentence for assault with intent to commit murder because he was 'wholly incapacitated for any kind of prison service' after being struck by lightning.¹⁵⁸

Twenty-eight year old 'labourer' Charles A. Long was convicted during the March term of the St Lucie County court in 1913 of having carnal intercourse with

Ethel Cook, an unmarried female under the age of eighteen years, in his house some six years earlier. He was sentenced to three years' imprisonment at hard labour.¹⁵⁹ Murray Sams of Deland, attorney for the petitioner, was able to gather recommendations from the sentencing judge, who wrote several letters to the Board in 1915, and from Captain H. B. Powell of Deland, and a petition from citizens of St. Lucie County. A crucial factor appeared to be Long's declining health. Dr. W. R. Stephens wrote to the Board in September 1914 that Long was suffering from 'severe gastric catarrh', was confined to bed and unable to do any work: 'It is my opinion that if he is kept in confinement much longer, having to be fed on the diet of prison life and suffer the many other hardships, he will suffer a permanent impairment of health'.¹⁶⁰ R. F. Milliken, yard man for DeLeon Naval Stores Company, also wrote to the Board about Long's illness, informing the members that he had supervised Long for five months, that Long's stomach trouble had persisted for most of that time, and he believed Long would die if not soon released.¹⁶¹ Captain Powell announced that 'in view of the fact that His Health is absolutely no Good I think he should be granted a Conditional Pardon'.¹⁶²

Long's application was passed for further investigation and consideration on 22 September 1914 and 9 December 1914, but denied on 17 March 1915, and again at the Board meeting of 8 December 1915. A conditional pardon was granted with effect from 20 December 1915, because his case had been endorsed by Judge Perkins, the Sheriff and Deputy Sheriff of St. Lucie County, eleven jurors, 'by a large number of prominent white citizens of St. Lucie County', and on evidence of his good prison record. The Board also noted 'that his reputation

prior to the crime for which he was convicted was that he was a hard-working and law-abiding citizen and that he has a baby dependent on him for support; and the further fact that there was room for possible doubt of the defendant's guilt'.¹⁶³ Did the Board members believe that Long's illness was of insufficient seriousness to warrant a pardon on medical grounds, or was the omission of this issue from the pardon decree an administrative oversight? The wording of such decrees raises questions over whether it mattered if a defendant had a well-constructed story or medical documentation so long as he had powerful connections to the Board.

Themes of disgrace, dignity and public interest permeate such requests and pardon decrees granted on the basis of birth and death. In Colonial America, a pregnant woman under sentence of death had a legal right to reprieve (but not pardon) because of her condition.¹⁶⁴ Nevertheless, 'pleading her belly' has a parallel in the adoption of parole in Florida in the first decade of the twentieth century, and further underlines the inadequacy of lease arrangements for female convicts. Ella Pender, convicted of manslaughter in Jackson County in 1902 and sentenced to five years' imprisonment, sought temporary release from the prison system in August 1903 when she was six months' pregnant: 'I heard from my mother and she said she would take care of me at home. Please let me hear from you as soon as possible. I am not in bed at all but I am not very well'.¹⁶⁵ Her request was endorsed by her relatives in Marianna, who petitioned Governor Jennings pledging themselves, 'to support her and give her the necessary attention during her pregnancy and confinement and as long as her parole may continue'. Supervisor Rogers informed Governor Jennings: 'You will do the convict system a favor to parole this woman for at least six months'.¹⁶⁶ A more lengthy

explanation of Ella Pender's situation followed two days later. The father of Ella Pender's child, which had been conceived during her incarceration, was a trusty at a convict camp at which she was the cook, and also house servant to the manager. Rogers regarded Pender as 'one of the most quiet, obedient and dutiful women in the State prison', who 'bore a good reputation for a negress prior to the time of her trouble and conviction'.¹⁶⁷ Despite her serious lapse of conduct, she was a fit subject for mercy.

Conditional pardons as conditional releases without supervision were often confused with parole, a systematic method of releasing an offender from prison after part of the sentence had been served, to re-establish the offender in the community and under administrative supervision. Parole with its roots in the English conditional pardon, was one of the innovations of the Progressive era (like probation), but remained distinct from the clemency power. Nevertheless, when Florida adopted 'paroles' in the 1900s these were in fact conditional pardons 'granted not by virtue of any statutory parole system [introduced in Florida in 1940s], but under the governor's pardoning power', and without proper supervision.¹⁶⁸ This makeshift arrangement led Henry Weihofen to declare:

It is submitted that the policy and practice of releasing convicts from the penitentiary upon conditions calling for good behaviour, and under supervision, should be determined parole, with administration concentrated in one agency, the parole board. Pardon should not be used as a regular release procedure but should be an extraordinary measure, granted for particular reasons calling for mercy, or leniency.¹⁶⁹

Probation, based on the principle that a convicted defendant was still under restraint and merely serving his or her sentence outside the prison walls because of their good prison record, also has parallels with conditional pardon.¹⁷⁰

Pender received a maternity furlough for one year on 1 September 1903. On 27 August 1904, just as her unsupervised temporary parole was about to expire, she petitioned McLin for a three-month extension:

Your petitioner represents that her baby is not a year old yet, and she has three girl children of which all of them are small, and If she is compelled to go back to the prison she has no one to leave her children with and they have to be left to the mercy of the world, and your petitioner further represents that she has not been well since her baby was born, and is not at all well now, and is unable to perform the services that will be required of her should she be compelled to return to the convict camps early as this.¹⁷¹

In a separate letter to McLin, attorney Ellis F. Davis, endorsed Pender's application: 'She has to cook around Town to get something for her children to eat and wear. Her behaviour since she has been home from the camp has been good, and I think it would be perfectly satisfactory to every Citizen of Jackson County - taking into consideration her circumstances, and the fact of her having to leave her little Children'. As there is no record of Pender re-entering the State Prison System, it appears that the parole became indefinite after 1904. Pender's case represents one step in a slow process where the State Prison System increasingly recognised the need to treat pregnant women as a distinct and separate class of prisoner, as illustrated by the following case. Twelve days into a ninety-day jail sentence for vagrancy on 11 June 1909, black female prisoner Annie Thompson gave birth to a daughter, prompting McLin to write to his fellow pardon board members to demand urgent action:

No female, whether a human being or a dumb brute, is capable of performing labor or taking exercise to any extent when so near to her time of confinement, and hence the sentence becomes absurd. . . We are not lawyers, but we do not believe that this sentence would hold good could the woman have the case presented to a competent Court and we do not want to detain any person on such flimsy grounds and we therefore ask that you authorize us to

release this prisoner, and we will have her sent to her house, where she belongs at present.¹⁷²

A full pardon was granted to Annie Thompson on 22 June 1909. McLin was of the view that proper, humane and dignified treatment of women prisoners was essential if the public was to remain convinced of the benevolent intentions of those who ran Florida's prison system and to counter opponents' charges that profits always came before effective care, supervision and management of the convict population. McLin's views also reflected the widely held belief that women prisoners should be treated differently from male offenders.

In his discussion of pardons as an integral part of the 'ideology of mercy' in eighteenth-century England, Douglas Hay argues: 'The grounds for mercy were *ostensibly* that the offence was minor, or that the convict was of good character, or that the crime he had committed was not common enough in the county to require an exemplary hanging'.¹⁷³ In other words, these were not the real grounds; rather they constituted a 'smokescreen'. However, as John H. Langbein has countered: 'In an age before probation and large-scale penal imprisonment, the existence of family and employment relationships was highly relevant to the decision whether or not to release an offender into the community'.¹⁷⁴ In other words, these were not ostensible reasons but the *real* reasons behind the issuing of pardons. A similar argument can be applied to Florida in the 1890s and 1900s. Annie Walker, convicted of uttering a forgery at the Criminal Court of Record of Duval County in 1914, and sentenced to five years imprisonment, had her application passed over on 13 June 1916, but six months later: 'It having come to the knowledge of the Board that this applicant was a young woman of good parentage and her mother being present before the Board and asked the privilege

of taking the applicant home to give her the opportunity and encouragement for living a reformed life', was granted a conditional pardon, with effect from 5 December 1916.¹⁷⁵

Florida's criminal justice system was defined by a bi-racial and multi-ethnic society based on inequality and patriarchy, and according to the belief system of respectable white male members of that society. The law enabled white middle class males to reinforce their dominance, and to restrict black and lower class freedom, but this is not to say that black, lower class or female Floridians could not influence their fate. Letters of recommendation and petitions point to an ongoing process of bargaining for mercy, a process in which a small group of offenders with the financial resources to pay for legal assistance and a network of family, friends, employers and acquaintances willing to put pressure on the Board, could expedite their release. While a criminal justice system 'that failed to recognize the distinctions among persons would have been seriously at odds with the social hegemony',¹⁷⁶ in Florida, in the interests of social hegemony and hierarchy, distinctions among persons were further constructed to conform to existing racial and gender hierarchies that the men who ran the criminal justice system, with popular support, wished to maintain. At the same time, '[i]n much the same way that Durkheim talks of the growing recognition of the offender as an individual to be valued like any other, and hence to be treated mercifully, Elias points to the increasing capacity of modern sensibilities to take the part of the other and to extend consideration even to social inferiors and enemies'.¹⁷⁷

Nevertheless, it was undoubtedly becoming increasingly difficult to convince the African American population of the necessity of respect for the rule

of law, even though African American and lower class whites continued to bring their complaints to court, and to use the criminal justice system to seek redress for personal injury. While conditions for African Americans across the South worsened noticeably around the turn of the century, segregation and disfranchisement each had its own timetable, causation and motivation, yet were inextricably linked. Pardon cases, nonetheless, underline the fluidity of race, class and gender relations in Florida before 1900 and in the first decades of the twentieth century. While one must be careful not to exaggerate the extent of fluidity either before or after 1890, even in the face of longstanding *de facto* segregation and after codification of segregation and disfranchisement, it appears that the transitional period of fluidity is perhaps longer in Florida than for other southern states. Florida elites rather than poor whites lent their support to convicts seeking clemency. Race, gender and class relations were marked by personal, interclass and inter-racial ties which could be paternalistic and patronising, but which, at the same time, could yield the desired outcome for social inferiors and offenders. The decisions of the Board to extend or withhold clemency essentially provides a discourse on the parameters of acceptable and excusable behaviour in Florida between 1889 and 1918, on the limits of reformation, and on the perceived depravity of offenders. Pardon applications represent a cultural exchange between popular and official culture conducted according to certain tacit rules and assumptions: 'The stakes were different for supplicants, listeners and pardoners, but they were all implicated in a common discourse about violence and its pacification'.¹⁷⁸

1. RCA, 1905-1906, p. 315.

2. RCA, 1905-1906, p. 314.
3. RCA, 1907-1908, p. 433.
4. W. H. Ellis to Hon. H. S. Phillips, 23 June 1904, AGC 4: 368-369.
5. Garland, p. 236.
6. Ibid.
7. RCA, 1891-1892, pp. 119-120; RCA, 1893-1894, p. 68.
8. RCA, 1895-1896, p. 53.
9. Ibid, p. 78.
10. House Journal 1897, p. 1153.
11. RCA, 1911-1912, p. 33.
12. RCA, 1915-1916, p. 77.
13. D. Lang to F. M. Morgan, 2 April 1908, IC Box 1/ Folder 2.
14. Jones, *Dispossessed*, p. 209.
15. Application for pardon to Honorable Board of Pardons, 29 March 1897, ACF 189/289.
16. Application for pardon, ACF 174/ no file number. Women figure prominently among the African American property-holding class of the neighbouring county, Marion County. See Michelle Denise Brown, "African-American Property Owners in Florida, 1700-1900," M.A. thesis, Florida State University, 1993, p. 63.
17. Conley, *Unwritten Law*, p. 178.
18. RCA, 1903-1904, p. 314.
19. House Journal 1913, p. 123.
20. House Journal 1915, p. 78; House Journal 1917, p. 35.
21. Minutes A: 176-191; Minutes B: 2-11. Florida, State Pardon Board, *Official Minutes, 1909-1942*, 2 vols. Record Group 690. Series 187. Florida State Archives, Tallahassee, Florida, hereafter cited as Minutes.
22. W. E. B. Du Bois, *The Souls of Black Folk*, (New York: Dover Publications, Inc., 1994), p. 108.
23. House Journal 1917, p. 44.

24. Davis, *Fiction in the Archives*, p. 28.
25. House Journal, 1911, p. 39.
26. Application for pardon, no date, ACF 137/2672.
27. Josephine Howard to Hon. R. A. Gray, 4 March 1916, ACF 137/2672.
28. Gannon, p. 75.
29. Vivien Miller, "Wife-killers and Evil Temptresses: Gender, Pardons and Respectability in Florida, 1889-1914," *Florida Historical Quarterly* 75 (Summer 1996): 60.
30. Scott, p. 97.
31. Governor Fleming granted Napoleon White a reprieve of seven days 'for a minister to talk religion into him'. However, reports of his conduct on the scaffold during the customary prayers and hymns seemed to indicate that this had not been successful. See FTU 24 September 1890, p. 1.
32. Scott, p. 99; Rothman, "The Pardoning Power," p. 159.
33. Scott, p. 98.
34. Motion for a new trial, 29 April 1889, in Florida, Division of Elections, Death Warrants 1869-1972. Box 2 (1885-1895). Record Group 156. Series 12. Florida State Archives, Tallahassee, Florida, hereafter cited as DWI. Hammond was 'killed by officers in Cairo, Georgia while resisting arrest, and was in the act of shooting [an] officer when [he] received [the] fatal wound' on 24 September 1903. He had escaped on 24 July 1900.
35. Friedman, pp. 144-146.
36. John S. Hughes, "Labelling and Treating Black Mental Illness in Alabama, 1861-1910," *Journal of Southern History* 58 (August 1993): 438.
37. John Starrett Hughes, "The Madness of Separate Spheres: Insanity and Masculinity in Victorian Alabama," in Carnes and Griffen, eds., p. 53.
38. Ibid., p. 57.
39. Robert M. Ireland, "Frenzied and Fallen Females: Women and Sexual Dishonour in the Nineteenth-Century United States," *Journal of Women's History* 3 (Winter 1992): 105.
40. Quoted in Ireland, p. 106. Mary Harris was acquitted of murder in 1865. Her unstable psychological condition was linked to both uterine irritation and disappointed love. See Jones, pp. 173, 183.

41. See Friedman, p. 8.
42. Ruth Harris, *Murders and Madness: Medicine, Law, and Society in the fin de siecle*, (Oxford: Clarendon Press, 1991), p. 299.
43. Friedman, p. 143.
44. Application for pardon, ACF 9/1222.
45. 'Both of the paries are colored. Doyle is a large black man of about 35. The woman is 30, of a ginger-cake color, and rather comely'. FTU 28 May 1896, p. 5.
46. Doyle v. State, 39 Fla. 156-157 (1897).
47. McGovern, *Anatomy of a Lynching*, p. 54.
48. Doyle v. State, 39. Fla. 158 (1897).
49. Brief for Plaintiff in Error, 26 September 1896, p. 4.
50. Doyle v. State, 39 Fla. 164 (1897). This was the third capital case in Spring 1897 to be affirmed by the Supreme court, the others being those of Kelly, and Robert Henry.
51. FTU 7 May 1897, p. 5.
52. FTU 8 May 1897, p. 8.
53. P. J. Stollenwerck, M.D., E. H. Huntley and C. H. Taylor to Judge Wm H. Baker, 7 May 1897, reprinted in FTU 9 May 1897, p. 5.
54. FTU 8 May 1897, p. 5. Headlines switched overnight from 'ENOCH DOYLE MUST DIE' on 7 May to 'DOYLE MAY NOT SWING' on 8 May.
55. T. H. Livingston, M. D., Sollace Mitchell, M. D. and J. C. L'Engle, M. D. to Hon. W. H. Baker, 26 May 1897, forwarded to Hon. W. D. Bloxham by W. H. Baker, 27 May 1896, in DWI Box 3 (1896-1901).
56. P. D. Cockrell to Hon. W. D. Bloxham, 5 August 1897.
57. D. W. Gillespie to Hon. W. D. Bloxham, 31 August 1897. During August and early September 1897 Governor Bloxham received letters in support of Doyle from four other Jacksonville clergy: Rev. N. Brown, Church of the Immaculate Conception, 4 August 1897; Rev. J. Milton Waldron, Pastor and President, Bethel Baptist Church, 6 September 1897; Rev. N. E. Porter, Pastor of Laura Street Presbyterian Church, 6 September 1897; Rev. John R. Scott, Presiding Elder, Sanford District A.M.E. Church, 6 September 1897, plus M. J. Christopher, President of the Colored Protection League of Jacksonville, 4 August 1897; E. J. Alexander to His Excellency William D. Bloxham, 7 September 1897: 'I know

you will pardon me for the liberty I take in writing you this letter, when I tell you that the interest I have in humanity forces it'. A second letter from D. W. Gillespie, 6 September 1897, describes Doyle as 'not only ignorant, but wholly (sic) illiterate'. Gillespie had baptised Doyle, but did 'not think him sufficiently sane to enjoy its privileges'.

58. R. M. Call to His Excellency W. D. Bloxham, Governor, 29 August 1897.

59. N. B. Broward to Gov. Bloxham, 7 September 1897.

60. FTU 13 August 1897, p. 8.

61. FTU 29 August 1897, p. 5.

62. FTU 31 August 1897, p. 8.

63. FTU 2 September 1897, p. 2.

64. FTU 6 September 1897, p. 8.

65. FTU 13 September 1897, p. 5.

66. FTU 15 September 1897, p. 6.

67. D. Lang to Mr. P. D. Cockrell, 6 August 1897, OC 3: 13; D. Lang to Rev. N. Brown, 9 August 1897, OC 3: 15.

68. Minutes B: 15.

69. D. Lang to Rev. N. Brown, 9 August 1897, OC 3: 15.

70. RCA, 1903-1904, p. 314.

71. Robert Oaks, "Things Fearful to Name": Sodomy and Buggery in Seventeenth-Century New England," in Elizabeth H. Pleck and Joseph H. Pleck, eds., *The American Man*, (New Jersey: Prentice-Hall, Inc., 1980), pp. 56, 71.

72. Copy of True Bill, 20 August 1888; Copy of Verdict, 1 December 1891; Copy of Evidence, 15 December 1891, ACF 139/ODB 58/1.

73. Application for pardon, no date, p. 1, ACF 162/1157.

74. A cousin, George Peters also testified that he was the victim of a similar assault by Panos, and reported Panos to County Solicitor. Scott Loftin, See "Exhibit B" Statement of Evidence, Application for pardon, ACF 162/1157.

75. J. G. Pace to Governor N. B. Broward, 28 September 1908.

76. See H. W. Mercer to Honorable Board of Pardons, 26 August 1908; recommendations from Captain O. J. Holland, Captain W. H. Williams, 26 August

1908.

77. McGovern, "Pensacola," p. 30.

78. Nick Apostle to the Honorable Board of Pardons, 31 August 1908. Both the Greek and non-Greek communities in Pensacola rallied to Panos's cause. His file contains a petition with 157 signatures as well as letters from lawyers and wholesale grocers, ACF 162/1157.

79. Statement of Evidence, 8 July 1889, pp. 1-2, ACF 182/ODB-4/1.

80. J. E. Yonge's statement of Evidence noted that Vicchio's language 'was very unintelligible and jury did not catch what he said'. Statement of Evidence, 8 July 1889, p. 2-3; Statement from County Solicitor [Yonge], 28 January 1890.

81. Frank Vicchio to Hon. L. B. Wombwell, 20 November 1889.

82. Statement from Judge Jno. C. Avery, 6 February 1890.

83. Indictment, 9 March 1903; Copy of Sentence, 18 March 1903; Information Sheet in file, 13 April 1906. The day after conviction Seaman C. Keller was discharged from the RNR ship, Rhone, then moored at Pensacola. See Certificate of Discharge, 19 March 1903, ACF 142/871.

84. Frederick Bonar to G. L. Lippell, 26 August 1905, ACF 142/871.

85. N. A. Blitch to Hon. N. B. Broward, 1905.

86. P.H. Baker to the Honorable Board of Pardons of the State of Florida, 14 February 1906.

87. Ayers, *Vengeance and Justice*, p. 234.

88. Richard Maxwell Brown, *No Duty to Retreat: Violence and Values in American History and Society*, (New York and Oxford: Oxford University Press, 1991), p. 19.

89. Ibid., pp. 5, 10, 20, 24, 36.

90. Ibid., p. 157.

91. FTU 16 April 1897, p. 5.

92. FTU 9 June 1896.

93. Edward N. Akin, "When a Minority Becomes The Majority: Blacks in Jacksonville Politics, 1887-1907," *Florida Historical Quarterly* 52 (October 1974): 125-127, 134, 137.

94. Davis, *History of Jacksonville*, p. 309; James B. Crooks, "Jacksonville in the Progressive Era: Responses to Urban Growth," *Florida Historical Quarterly* 65 (July 1986): 68-69.
95. Akin, p. 140.
96. Roger Lane, *Roots of Violence in Black Philadelphia, 1860-1930*, (Cambridge, Mass. and London: Harvard University Press, 1986), p. 84.
97. FTU 27 May 1896, p. 8; FTU 9 June 1898, p. 8. Kelly, Robert Henry and Enoch Doyle were all sentenced to death on 8 June, and Jennie Walker and John G. Moses to life imprisonment.
98. Mann, p. 137.
99. FTU 27 May 1896, p. 8.
100. FTU 1 February 1896, p. 5; Court Testimony, p. 4 in Florida, Supreme Court, *Case Files, 1825-*. Record Group 970. Series 49. Florida State Archives, Tallahassee, Florida, hereafter cited as SCCF.
101. FTU 27 May 1896, p. 8. Police Commissioner George Burbridge testified that Rule 15 of the Jacksonville Police Code required a police officer to be always on duty.
102. A broken knife blade was found in Tallent's pocket, Statement of J. Carter, SCCF 484, p. 3. Kelly was unable to prove that Tallent had drawn a knife, hence the conviction. See FTU 18 April 1901, p. 5.
103. FTU 31 May 1896, p. 6; Brief for Plaintiff, SCCF 484, p. 43.
104. FTU 10 July 1896, p. 5.
105. FTU 1 February 1896, p. 5 contains a report confirming Tallent's death. The Copy of Indictment, 6 May 1897 states that on 25 December 1895 Kelly murdered John B. Tallent with a pistol and Tallent died on 29 January 1896.
106. Brief for Plaintiff in Error, 11 January 1897, SCCF 484, pp. 4-7.
107. Statement of J. Carter, 14 April 1897, p. 2.
108. See Brief for Plaintiff, pp. 15-19.
109. Ibid., p. 27.
110. Brief for Defendant in Error, 3 March 1897, p. 10. Carter noted that the first jury ballot had been 11 to 1 in favour of conviction.
111. Jno. C. D'Engle to Hon. Pardon Board, 29 April 1897, ACF 142/234.

112. Mrs. S. L. Reed to the Honorable State Board of Pardons, 10 May 1897. M. M. Driggers shot R. T. Dowling, former tax collector of Bradford county, in July 1895. He was found guilty of first degree murder and sentenced to hang. A persistent campaign to have the death sentence commuted to life imprisonment was led by Mrs. M. M. Driggers and Mrs. S. L. Reed. See Vivien Mary Louise Miller, "Murder, Punishment and the State Board of Pardons in Florida, 1890-1910," (M.A. thesis, Florida State University, 1990), pp. 141-143.

113. FTU 21 May 1897, p. 8. Affidavit of R. H. Bowden, Sheriff of Duval county, 10 May 1897. James M. Kelly informed Sheriff Bowden of an intended jail break by white prisoners in Duval county jail. Affidavit of A. M. Michelson, 6 May 1897, reported a conversation with one Dexter Washington after Tallent was killed. Washington was a witness to the killing and claimed that Tallent had a knife in his hand and struck Kelly before Kelly fired. Washington was not placed on the witness stand because had been convicted previously of larceny in Duval county and was therefore disqualified, and in the state prison when the affidavit was drawn up.

114. FTU 9 June 1897, p. 5.

115. FTU 29 November 1897, p. 5. Kelly had remained at the Duval County jail as he had been unable to raise the required bail bond of \$5,000 fixed by Judge Call on 28 January 1896. See FTU 1 February 1896, p. 5.

116. FTU 18 April 1901, p. 5.

117. L. B. Wombwell to Jas. W. Kelly, 28 November 1900.

118. James M. Kelly to Hon. John C. L'Engle, 29 November 1900.

119. FTU 10 June 1901, p. 5. Prison registers record that Kelly, a twenty-seven year old white male prisoner originally from Georgia, was sentenced to life imprisonment for murder in June 1897, and received a conditional pardon on 17 April 1901. There is a subsequent entry for a James M. Kelley, a forty year old white male prisoner originally from Georgia, sentenced to life imprisonment on 26 June 1909 for murder, who received a conditional pardon on 1 September 1917. Preliminary investigation suggests that this is the same person.

120. RCA, 1907-1908, p. 393.

121. Ibid., pp. 393-394.

122. RCA, 1913-1914, p. 45.

123. Michael J. McNally, *Catholicism in South Florida, 1868-1968*, (Gainesville, F.L.: University of Florida Press, 1982), pp. 16, 38.

124. Ibid., p. 19.

125. Crooks, *Jacksonville After the Fire*, p. 63.

126. Edward F. Keuchel, "Sister Mary Ann: 'Jacksonville's Angel of Mercy'." Paper presented to the 92nd Annual Meeting of the Florida Historical Society, 20 May 1994.

127. "75th Diamond Birthday Observance of Useful Life of Eartha Mary Magdalene White 'Doctor of Humanities'," Photocopy in author's possession, p. 7. 'Eartha Mary Magdalene also operated a department store; a steam laundry; was a licensed real estate broker; a census enumerator, a county social worker with a desk in the Court House; was the first woman employee of the Afro-American Life Insurance Company; conducted a hack service; was active in organizing the Jacksonville Business League; she was president of the Citizens Protective League; conducted a house cleaning and employment bureau; travelled all over the county and throughout the world with the Oriental and American Opera as a singer and performer'. During World War I she was the only woman in a sixty-man interracial 'War Camp Community Service' conference in Jacksonville, December 1918. She was a member of Woodrow Wilson's White House Conference and later colonel of the Women's National Defense Program under General Dr. Mary McLeod Bethune in World War II.

128. Charles Sumner Long, *History of the A. M. E. Church in Florida*, (Philadelphia: A. M. E. Book Concern, 1939), p. 184-192; McKinney, p. 88-96.

129. Vassiliki Panos to His Excellence, Governor N. B. Broward, 3 November 1908 and 4 November 1908. These letters are written in the same hand as that of M. Pouyhyl[?], ACF 162/1157.

130. Lillie F. Flax to the Board of Pardons of the State of Florida, 30 November 1915.

131. Mrs Gudelia Howsley to Hon. Lee Gibson, 16 June 1916, ACF 137/2240. The letter was written by a third party as Mrs Howsley could not write or speak English.

132. Lee Gibson to Hon. Board of Pardons, 22 June 1916.

133. D. Lang to Mrs Sarah Jordan, 25 January 1898, OC 3: 91.

134. Barnett, "Grounds of Pardon," p. 496.

135. Ayers, *Vengeance and Justice*, p. 204.

136. A. M. McKenzie to Col. E. L. Robeson, 28 February 1908, ACF 91/1173.

137. Curtain, p. 22.

138. House Journal, 1911, p. 39.

139. Marvin E. Wolfgang, "Murder, the Pardon Board, and Recommendations By Judges and District Attorneys," *Journal of Criminal Law, Criminology and Political Science* 100 (1959): 339.

140. W. R. Moore to His Excellency, H. L. Mitchell, 30 December 1896, RCA, 1895-1896, p. 78.
141. 'Statement of Counsel for Prisoners,' Jeffrey B. Browne to the Honorable Pardoning Board, February 1902, pp. 1-2, ACF 99/508.
142. Ibid., pp. 2-3.
143. John C. Hood to His Excellency Hon. E. A. Perry, 6 October 1888, ACF 136/1888.
144. Dickinson & Erwin to Gov. Bloxham, 8 March 1898.
145. Colburn and Scher, p. 106.
146. J. S. Willis to Hon. Board of Pardons, 3 July 1917.
147. C. C. Morgan to Hon. W. D. Bloxham, 3 May 1900, IC Box 1/ Folder 1.
148. D. Lang to Henry Webb, February 1899, OC 3: 293.
149. Flynt, *Cracker Messiah*, p. 286.
150. Dickinson & Erwin to Gov. Bloxham, 8 March 1898.
151. C. A. Finley to W. D. Butler, 6 May 1892, OC 1: 73.
152. Barnett, "Grounds of Pardon," p. 518.
153. Convicts at Florida City to Gov. Bloxham, 16 January 1900, CLP Box 6/ Folder 3: Reports - Supervisor of State Convicts to Governor, 1899-July 1913.
154. R. F. Rogers to Gov. W. D. Bloxham, 8 February 1900, CLP Box 6/Folder3.
155. Minutes B: 231. Exactly the same reasons are given for Hester Stone who was conditionally pardoned also on 28 August 1917 after serving eight years of a life term for murder.
156. Minutes B: 43.
157. Minutes B: 215.
158. Minutes B: 18.
159. Copy of Indictment, 12 March 1913; Application for pardon, 1913, ACF 141/2006.
160. Dr. W. R. Stephens to the Hon. Board of Pardons, 19 September 1914.
161. R. F. Milliken to Hon. Board of Pardons, 19 September 1914.

162. Captain H. B. Powell to Hon. Board of Pardons, 6 September 1914.

163. Minutes B: 38, 51, 68, 105. Application for pardon signed by Hon. James W. Perkins, presiding judge, the sheriff and deputy sheriff of St. Lucie county, eleven jurors, and 'by practically all of the respectable white citizens of St. Lucie county to whome your petitioner was able to have his petition presented'. The applicant's wife may have led the petition effort.

164. Friedman, p. 42.

165. Ella Pender to R. F. Rogers, 21 August 1903, ACF 163/640.

166. Petition, August 1903; R. F. Rogers to His Excellency, Governor W. S. Jennings, 29 August 1903, ACF 163/640.

167. R. F. Rogers to His Excellency, Governor W. S. Jennings and the Board of State Pardons, 31 August 1903. At the top of the letter are pencilled messages: 'Look into Walton circ and see how parents are' and, 'I know case and woman and think she can be trusted [signature unintelligible]'.

168. Henry Weihofen, "Consolidation of Pardon and Parole: A Wrong Approach," *Journal of Criminal Law, Criminology, and Political Science* 30 (1930): 537.

169. Ibid., p. 536-537.

170. Morris, p. 185. In his 1911 message to the legislature, Governor Gilchrist urged passage of a probation law for first-time offenders. See Florida, *Journal of the House of Representatives, 1911*, Florida State Archives, Tallahassee, Florida, p. 43, hereafter cited as House Journal. A Parole Commission was not fully established in Florida until 1941.

171. Ella Pender [written by Ellis F. Davis] to Honorable B. E. McLin, 27 August 1904.

172. B. E. McLin to Honorable Board of Pardons, no date, read to the Board on 22 June 1909, see Minutes B: 17-18.

173. Douglas Hay, "Property, Authority and the Criminal Law," in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, (New York: Pantheon Books, 1975), pp. 43-44.

174. John H. Langbein, "Albion's Fatal Flaws," *Past and Present* 98 (1983): 111: 'Even today, if a convict can get respectable people to support him, sentencing officers are inclined to give weight to that evidence on the grounds that it has predictive value on the question of the likelihood of successful resocialization'.

175. Minutes B: 139, 176.

176. Conley, *Unwritten Law*, p. 178.

177. Garland, p. 236.

178. Davis, *Fiction in the Archives*, p. 112.

CHAPTER 4

CARNAL KNOWLEDGE AND CLEMENCY

Pardon applications from offenders convicted of rape, attempted rape and carnal knowledge offences offer important insights into four areas of Florida's social and cultural past: the workings of the criminal justice system itself; a pragmatic definition of and the importance of respectability; attitudes towards women, children and sexuality; and attitudes towards race and sexuality. Perceptions of gender, race, class and constructions of 'appropriate' or 'respectable' behaviour for lower-class white and black offenders, and of female victims and complainants, based on community prejudices and the attitudes of white middle-class pardoning board members, influenced decisions by Florida's State Board of Pardons, 'a community of honourable men', to grant or withhold clemency to offenders convicted of sexual violence, which is the subject of this chapter, and shaped the post-conviction experiences of offenders and victims. These evaluations reflected the persistence of a distinctive morality rooted in southern historical development, religion (specifically evangelical Protestantism and the belief system it promoted), and race, gender and class hierarchies.

Ownby describes the South as having 'an evangelical culture', in which the

evangelicals' moral code extended to non-evangelicals, and where constant attention to the details of personal behaviour was required.¹ He suggests it was 'the tension between the extremes of masculine aggressiveness and home-centred evangelicalism that gave white southern culture its emotionally charged nature. Evangelicals constantly worried about the sinfulness of male culture', organised around gambling, hunting and alcohol.² To the urbane members of the pardon board, moderation, discipline and self-control, central standards of evangelical Protestant morality, had become increasingly important components of the projected image of middle-class Southern manhood in the late nineteenth century. These standards were also central to the nineteenth-century Northern 'culture of dignity' as described by Ayers,³ but Southern men continued to adhere to basic notions of honour which demanded self-assertiveness, aggressiveness and competitiveness where appropriate.

Respectability is central to understanding society and culture in Florida, often bound up with, but also distinct from, honour. Maintaining respectable status required that one dress and behave in a manner appropriate to one's age, race, gender and socio-economic class. A distinction had to be made between the innocent and respectable and the criminal offender or persons who lived outside the bounds of respectable society. As Carolyn Conley observes for Victorian Britain: 'Respectability is the quintessential Victorian ideal and yet the most difficult to define. While the literature is abundant, the definition remains obscure'.⁴ Emphasis was placed on appearance, for example, on cleanliness, tidiness and modesty in dress; and in manners, for example, in speech, conduct and moderation in alcohol consumption. While there are enormous differences in

context between Victorian Britain and the late nineteenth/ early twentieth-century American South; such emphases and distinctions were to be found in the latter. Church membership was also an extremely important component of Southern respectability. The rules for respectable behaviour might differ as to whether the behaviour was in public or private, and whether participants were accepted members of the local community or strangers, male or female, black or white, but were imposed, internalised, and defined from within in each case. Respectability was a central consideration in sexual offences trials and pardon applications in that the perceived character of the victim and accused helped determine the outcomes. Perceptions of respectability or disreputable character altered the relationship of the offender and victim to the criminal justice system. As in British and Northern United States' courts, evaluations were based on conduct in the courtroom, marital status, occupation, sexual continence, perceived moral character and manners.⁵ Respectability was central to middle-class standing, but also cut across class lines, and was of particular importance to the lower or working classes as it distinguished them from the criminal or 'dangerous' classes.

Even though it may have been still fairly common practice among middle-class men in the late nineteenth century to get their first sexual experience with prostitutes as an essential preparation for manhood and marriage, Charles Rosenberg suggests that by the late nineteenth and early twentieth centuries, middle-class men were differentiating themselves from the lower classes, and especially from their domestic servants, by adopting the value of sexual continence, the implication being that the lower classes were imbued with a different set of sexual values.⁶ This was not confined to white middle class

American society: Friedrich Engels considered that the 'sexual license' of the working classes marked them as 'a race wholly apart from the English bourgeoisie', and argued that the latter was not able to impose its own moral code upon the working classes.⁷ Lower-class displays of promiscuity and immorality were often explained by overcrowded slums and overindulgence in alcohol⁸; in Florida, racial characteristics and alcoholic incontinence were common explanations for such outbursts. African American intellectual H. T. Kealing identified sexual incontinence as one of several inbred deficiencies in Southern blacks as a consequence of slavery, (along with shiftlessness, indolence and dishonesty).⁹ The association of certain social or recreational pursuits with the lower classes was bound up with the changing mores and sensibilities that are central to Elias's 'civilizing process', but in the American South these were also racially ordered.¹⁰

An important nineteenth-century conundrum was whether sex was to be a procreative or an erotic act, as the century witnessed changes in the meaning of sexual intercourse through the decline of the reproductive function and clearer emergence of the 'erotic component of sexuality' (although many Americans were not necessarily conscious of the growing importance of non-reproductive sexuality).¹¹ However, the procreative function and sexual restraint (male continence and female purity) remained a powerful standard preached to and by the white middle class in the late nineteenth and early twentieth centuries. Uncontrolled sexuality was viewed as damaging to the community, though Victorian authors disagreed on the means of controlling eroticism, from abstinence to moderation to surgical remedies in extreme cases.¹² Marriage was considered

another means of restricting sexual passion in women and as a vehicle for developing good habits and character in men. Freedman observes: 'Some middle-class men associated the erotic with the lower classes and sought to differentiate themselves by practising sexual restraint'.¹³ In this context, rape was increasingly perceived as a crime originating with the eroticism and uncontrollable passions of lower-class black and white males, (in some ways, linked to the nineteenth-century liberal notion that the economic status of man determined his moral possibilities).¹⁴

Emancipation, together with postwar poverty and the indebtedness of Southern whites, led the latter 'to examine many moral issues more closely, out of a new need to identify themselves as distinct from and superior to blacks'.¹⁵ White Southerners of all classes felt the postwar black community was lapsing into indolence and immorality, fears intensified by the equation of blacks with savage natures and animalistic passions. Ownby argues that white evangelical southerners 'were especially concerned with stifling the animal within man because they often identified black behaviour with the animal world. The question of what was human and what was animal had real significance for people who felt a need to be something better than black'.¹⁶ Such concerns were bound up with white middle-class concerns over public space and public disorder, and the challenges that male public activities posed to evangelical standards of morality in late nineteenth and early twentieth-century Southern small towns and cities. For example, 'the masculine aggressiveness of numerous fights, confrontations, and contests, the self-indulgence of the barroom, the easy profanity, and the presence of blacks enjoying themselves all marked the main street as a special place for men outside the moral

boundaries of the home and church'.¹⁷ Court days, Saturdays, and festival days provided particular opportunities for male disorder.

The perception of an increased and more visible African American male presence on the streets of southern towns and cities in the decades after the Civil War and Reconstruction was viewed as threatening, and an indication of the moral decline of the black community. As the world outside home and church was perceived as increasingly sinful and threatening, white evangelicals believed blacks constituted an important part of the threat to morality.¹⁸ In refusing to sign a petition requesting pardon for William Adams, State Attorney, J. M. Rivers, expressed one function of Florida's criminal justice system: 'Of course, we cannot teach the negro race morals all at once, but when we have an opportunity like the one at hand, there is no reason why we should not at least give them a small lesson in morals, as well as to show them that the laws of the Country must be obeyed'.¹⁹ Further, in the late nineteenth century, new scientific theories of Anglo-Saxon superiority linked crime, race, class and hereditary characteristics, and hardened the view of white Southern society toward black and lower-class offenders, but also served to increase the social isolation of white convicts of means who had the misfortune to fall foul of the law. At the same time, W. E. B. Du Bois and other black leaders noted that the post-Civil War black community had produced 'a class of black criminals, loafers, and ne'er-do-wells who are a menace to their fellows, both black and white'.²⁰ Governor Broward observed that race relations by the early twentieth century had become increasingly strained: 'The negroes today have less friendship for the white people than they have ever had since the Civil War, and the white people have less tolerance and sympathy

for the negro'. He advocated colonisation as the best solution to this problem.²¹

Such views impacted on the standards used to measure the criminality of an offence, on legal definitions and popular conceptions of what constituted rape in inter-racial and intraracial cases, and images of the rapist particularly when the defendant was an African American male. Conley notes that the gender-specific nature of rape made it difficult for the men who ran the criminal justice system to comprehend fully the criminality of rape and sexual violence: 'While it was the duty of respectable men to refrain from abusing their patriarchal power, sexual aggression was perceived as normal, healthy, and inevitable'. In some cases judges and juries could view sexual assaults as 'regrettable lapses of self-control' rather than serious acts of interpersonal violence.²² A similar argument can be made for late nineteenth- and early twentieth-century Florida, but sexual aggression and the lapses of self-control were applied differently in rape cases according to the race and social status of offender and victim. No Florida criminal justice personnel, from Justices of the Peace to sheriffs to pardon board members, underwent any training in handling sexual violence cases. They conducted investigations according to their own conservative belief system which could significantly disadvantage female victims. Any assessment of male responsibility for rape was in significant measure based on the extent to which the female victim was considered to have lived up to society's standards of respectable womanhood. A woman's failure to live up to these expectations, her infidelity, or lack of virtue, could provide an exculpatory factor in assessing male criminal responsibility.

Rape, race and gender

In the late nineteenth century Florida defined rape as illicit carnal knowledge of a female under ten years of age 'by force and against her will', an offence that was punishable by death or life imprisonment.²³ The late nineteenth century witnessed increased state intervention in the regulation of sexual matters, efforts often promoted by women through, for example, campaigns for the enactment of laws prohibiting inter-racial marriage, or support from male and female social purity reformers to raise the age of consent. The Florida Federation of Women's Clubs (FFWC), petitioned the State legislature in 1897 to raise the female age of consent from ten to twenty-one years; legislators responded by raising it to sixteen and then eighteen years in 1901, and reworded the statute to place emphasis on the 'previous chaste character' of an unmarried victim. Carnal knowledge of an unmarried female under eighteen years of age carried the penalty of imprisonment of up to ten years, or fine of up to two thousand dollars.²⁴ State regulation was linked to the social purity movement and its assault on the moral laxity of the double standard, but was also linked to efforts of evangelical Protestants to enforce evangelical morality through state regulation, evident in anti-swearing and prohibition laws, as the middle-class Protestant family became increasingly concerned with public order.²⁵

In order to convict a defendant of rape in Florida in the late nineteenth and early twentieth centuries, five elements had to be proved beyond a reasonable doubt: the act was illicit; that carnal knowledge or sexual intercourse had taken place; the victim was female (and not married to the accused); force was used; and was used against the victim's will.²⁶ A set of evidentiary rules, all subject to

class and race manipulation, surrounded these statutes/elements, thus they may have been much easier to 'prove beyond reasonable doubt' if the woman were white and chaste, but race did not shield a woman from attacks on her moral character and conduct. Nevertheless, a central problem lay in the relegation of black and lower-class white women to a place outside the ideological construction of 'Southern womanhood', and at the marginal boundaries of 'respectability'. This reality could have devastating consequences for African American and lower class white female victims of rape as charges of mendacity and 'common prostitution' abounded. Female sexuality was constructed in negative terms, rooted in negative misogynistic images of woman as temptress and liar.²⁷

White Southerners' assumptions about the innateness of black female promiscuity, licentiousness, immorality and incapability of withholding consent or practising continence, survived long after emancipation liberated black women from their chattel status. In an article published in the Northern journal, the *Independent*, one Southern white woman voiced such concerns:

Degeneracy is apt to show most in the weaker individuals of any race; so negro women evidence more nearly the popular idea of total depravity than the men do . . . they are the greatest menace possible to the moral life of any community where they live. And they are evidently the chief instruments of the degradation of the men of their own race. When a man's mother, wife and daughters are all immoral women, there is no room in his fallen nature for the aspiration of honor and virtue . . . I cannot imagine such a creation as a virtuous black woman.²⁸

J. Hillman, Floral City manufacturer of Naval Stores, described Butler Hall (convicted of rape in Jackson County in November 1886) as a 'very faithful' prisoner who had been 'charged with a crime that I believe is almost impossible to commit (that of raping another negro)'.²⁹ Such views were not limited to

African American women. In a speech before the American Prison Association in 1905, Florida's State Prison Physician, Dr. Blich, asserted:

The negro criminal is in nine cases out of ten a degenerate issue even of his own race. Fifty per cent. of him is the progeny [sic] of licentiousness and vice, conceived among surroundings of the filthiest kind and among breeding places of disease, from diseased parents, in the moment of the most virile lust and passion and born out of wedlock, incapable of finer feelings and turned adrift to hide and sleep and exist, more frequently at the age of 2 to 3 and 4 years than otherwise, and incapable of learning right from wrong.³⁰

Blich believed that such conduct would result inevitably in the extinction of the African American race, but was keen to emphasise to his Northern audience that Southerners did not blame the African American for his natural criminal tendencies; they were seeking to counter black degeneracy through firm moral guidance and emphasis on employment.³¹

While late nineteenth-century black women 'shared with black men all the burdens of subordination; in addition, they were denied the deference granted women as compensation for powerlessness and suffered as objects of sexual predation'.³² The above commentaries underline the vulnerability of poor black women to sexual violence and the obstacles to successful prosecution, and black women faced particularly limited options in taking white male attackers to court (under slavery, they had no legal recourse against their attackers). Nevertheless, rape was considered a serious offence, evident in that the men convicted received higher sentences on average, and more life sentences, than those convicted of other crimes, with the exception of murder. However, the rape of a black woman was perceived to be of little consequence outside the black community. Much of the scholarly examination of rape has focused on inter-racial rape (including the sexual

exploitation of slave women by white masters) and its relation to lynching, and racial disparities in the administration of the death penalty as rape was previously a capital offence. Historian Jacquelyn Dowd Hall concludes: 'No image so dramatically symbolized the most lurid of Victorian fantasies as that of violent sexual congress between a black man and a white woman',³³ and has termed the rumours of rape which pervaded the Black Belt during the late nineteenth century, as 'a kind of folk pornography' in which black male perpetrators were invariably described as 'ravenous brutes' and white victims as 'beautiful, frail, young virgins'.³⁴

Racial disparities in the administration of the death penalty are evident in Florida throughout the nineteenth and twentieth centuries, as ninety percent of those executed for rape were black, of whom seventy eight percent were convicted of raping white women.³⁵ In May 1909, under the headline, 'Negro Brute Hanged for Heinous Crime', the *Times Union* reported that justice had been meted out in Titusville to Will McFadden, 'a ginger-cake colored negro, for the usual crime of that race'.³⁶ Scholars have tended to overlook the incidence of intra-racial sexual violence, and in particular the experiences of African American females victimized by African American males. The majority of cases scrutinized by members of Florida's Board of Pardons in the late nineteenth and early twentieth centuries involved intra-racial sexual violence, and the majority of complainants were African American women. Grand juries, cautious in indicting for rape offences, notwithstanding the attitudes toward black and lower-class complainants, conversely may have been more likely to indict African American men for sexual violence offences on the complaint of African American women.

At the same time, African American and lower-class white female rape victims were using Florida's criminal justice system to initiate prosecutions and to seek redress against members of their own race who had subjected them to sexual violence. At least 204 women and children (less than two percent of all committals) made the decision to report an assault, and brave the questions of defence attorneys to testify in court in these years.³⁷ During the 1886 Fall term of the Circuit Court of Jackson County Ida Franklin, the complaining witness against Butler Hall, testified that on 30 September 1886 she had been gathering fire-wood behind the white Methodist church in Greenwood, an hour or so before sundown, when Hall assaulted her.³⁸ She immediately reported the rape to Justice of the Peace, R. R. Pender, at his store, then informed her relatives who worked at G. A. Logan's gin-house. Pender and Logan confirmed she had leaves on her back and appeared very agitated, while several other witnesses (including her father Hillman Franklin) described her as being in a distressed condition. Hall alleged that he had consensual intercourse with Ida Franklin on several occasions prior to 30 September, but on that evening he had chastised her about having intercourse with other men and had struck her. He implied that Franklin's complaint was motivated by her desire to seek retaliation for his accusation of 'common prostitution' and violent conduct toward her.³⁹

By bringing her complaint to court, Franklin was actively challenging the image of black women as licentious and promiscuous together with ideas about appropriate female behaviour in such circumstances. Because of tacit assumptions on the part of judges, juries, and pardon board members as to how women should behave in certain situations, defence attorneys routinely tried to establish evidence

of consent regardless of the circumstances of the sexual attack. Juries could be uncomfortable in convicting in cases where victim and defendant were even slightly acquainted, because of the presumption of consent, but this did not necessarily result in acquittal. Twenty-six year old Butler Hall was convicted of raping nineteen-year old Franklin and sentenced to life imprisonment on 24 November 1886. Although they used the law to confront male aggressors whenever it was reasonable to do so, black and lower-class white women undoubtedly remained ambivalent about the effectiveness of this strategy, not least because of the difficulties in proving rape.

Evidentiary requirements

Evidentiary requirements, such as the need for corroborating evidence because of the belief that women lacked veracity, the fresh complaint rule (the absence of a fresh complaint created 'a strong but not conclusive presumption against a woman'), and the requirement of previous chaste behaviour, reveal an underlying theme of distrust by the legal system of female complainants and an overriding fear of female autonomy. Male judges and jurors carried patriarchal preconceptions about female behaviour that impacted on the function of the criminal justice system. These fears and assumptions, and the power politics at stake (the use of sex as a means of regulating the movement of women as a class of persons) permeate letters and petitions to Florida's pardon board. They were reflected in an announcement by a Georgia appellate court in 1904 that 'every man is in danger of being prosecuted and convicted on the testimony of a base woman, in whose testimony there is no truth'.⁴⁰

During his trial for rape during the Spring term 1910 of the Circuit Court of Bradford County, Mack Wilson argued that not only had Girtrude Futch consented but they had been conducting an adulterous affair.⁴¹ Girtrude Futch identified Mack Wilson in court as her attacker, and denied having seen him before or since the assault. She reiterated that she did not resist Wilson, 'as I was afraid to, I was afraid he would kill me. There was no one else in the house except my little baby'.⁴² Wilson did not deny being at the Futch property on the morning of 8 January, but claimed Girtrude Futch had consented to have intercourse with him on two occasions (24 December 1909 and 8 January 1910), and feared discovery by her husband. At the same time, Wilson emphasised his own marital status and his employment at the Starke Lumber Company mill.⁴³ His brother-in-law, Vance Stokes, testified that Wilson did not carry a pistol, was not having any marital troubles, and had not resisted arrest.⁴⁴ Wilson, nevertheless, was convicted of raping Girtrude Futch.

The largest petition (with 106 signatures) in his pardon file urges the Board to deny Wilson's application for clemency: 'We know the said Wilson, and know him to be of a very low Character, and to be a dangerous person to let free among the citizens of our community', and, 'We know the lady upon whom he committed the offence and know her to be a woman of unquestionable character'.⁴⁵ However, descriptions of Girtrude Futch's conduct in other letters to the Board were not so complimentary. For example, H. Austin swore that he attended Wilson's trial and,

paid special attention to the manner and expression of Mrs. Futch, the complaining witness, during her entire testimony . . . and . . . was especially impressed with the indifference of the said witness, and that at several times during her cross examination and when

being questioned as to the circumstances surrounding the immediate act of rape itself that the said witness smiled when answering questions, and especially when asked the question as to where her hands were at the time her privates were being penetrated by the privates of accused. Affiant further states that the said prosecuting witness at no time during her direct or cross examination at the said trial showed any sign of regret or grief, but that she rather showed signs of being amused and of levity.⁴⁶

The demeanour of the prosecuting witness was also criticised by Constable M. J. Jones who charged that Girtrude Futch 'treated the matter lightly and laughed several times when most closely questioned as to the act of intercourse itself'.⁴⁷ As Peter Bardaglio notes, if the victim was poor, lacked social position and did not behave in an 'appropriate' manner, 'in the eyes of the community she lacked honor and worth, and, in the judgement of legal authorities, the likelihood that she had been raped decreased'.⁴⁸ Carolyn Conley further emphasises the different expectations of female behaviour according to social class: while hysteria was the proper response from sexually ignorant ladies, working women [and married women] 'were expected to cope with reality'.⁴⁹ Rape victims seem to have been branded with a invisible 'CP' for 'common prostitute', the permanency of which is evident in the way the demeanour of prosecuting witnesses was assessed long after the event, and their behaviour was continuously judged against carefully constructed notions of how Southern women should behave, compounded by the reality that loss of virginity or marital chastity reduced a woman's worth whatever the circumstances.

The behaviour of male relatives was also under community scrutiny in light of the traditional view that rape brought dishonour to a woman and her family. In inter-racial rapes in particular, where the victim was white and where rape 'was less the violation of a woman's autonomous will than the theft of her honor',⁵⁰

legal punishment was often adjudged inadequate and uncertain, while a female victim who had already undergone much humiliation and suffering 'could not be put on the stand in full view of a packed courtroom and then required to again look into the face of and publicly proclaim her assassin'.⁵¹ According to Constable Jones of Starke, Wilson was arrested by Constable George Futch of Lawtey (uncle of S. J. Futch, Girtrude Futch's husband) assisted by ex-convict Ed Alvarez, then taken before male relatives of Girtrude Futch before being identified by her. The fact that Girtrude Futch's relatives had not attempted to kill the accused, even though this was an intra-racial offence, thus subjecting her to public show in the courtroom, further persuaded Jones of Wilson's innocence.⁵²

Application for a full and free pardon for thirty-five year old white convict Mack Wilson was filed in January 1911 by Wilson's attorney D. E. Knight on the basis that Wilson was innocent of rape, that he had not been assigned an attorney until after the Spring court term had begun, and 'that the very nature of the offense for which he was charged and convicted made it very difficult to defend, and that at the time of his trial the excitement of the people was running high'.⁵³ Wilson's appeal for clemency received strong support from Bradford County sheriff, J. N. Langford:

I desire to say that at the time this party was convicted of rape he was a comparative stranger to the people here and was without friends or money, that no one seem [sic] to take any interest in his case. Since his conviction there has arisen a serious doubt in the minds of a great many of our citizens as to his being guilty of the offense for which he was convicted, and being acquainted with the case in the way sheriffs usually are acquainted with cases they have to handle there is a very serious doubt in my mind as to his guilt. At the time of his trial there was considerable sentiment against him and a great deal of talk of lynching him, and while the sentiment has not entirely changed it has changed to a great extent and especially among those best acquainted with the case.⁵⁴

Along with these arguments of unfair conviction, the pardon appeal emphasised Wilson's good prison conduct. Numerous recommendations were submitted by guards and captains at convict camps at Belmore and Bonaventure for 'a hard working obedient and trusty Prisoner', who had provided the State Prison System with years of valuable service as a trusty and in preventing escapes.⁵⁵ A 1912 petition signed by several farmers, camp guards and a turpentine operator at Belmore, stated 'that among his [Wilson's] duties as a prisoner are those of training the hounds to trail and catch escaped prisoners'.⁵⁶ These recommendations from 'numerous responsible parties familiar with the case', the jurors and sheriff, were instrumental in ensuring Wilson received a conditional pardon at the Board meeting of 13 November 1912.⁵⁷

Interrogation of rape victims was very public and could be brutally matter-of-fact, and there were few displays of Victorian sensibilities over the graphic details recounted in trial records, newspaper reports, and pardon applications. Further, a rape victim could not remain legally anonymous in Florida until 1911, when the legislature made it unlawful for any newspaper, magazine or periodical to identify by name the victim of a rape or attempted rape.⁵⁸ Women who brought rape charges were themselves suspect because they were making a public statement on the loss of their virtue, thus laying themselves open to blame for failing to protect their innocence, provoking an assault, or crying rape to preserve a veneer of social respectability.⁵⁹ Mary Sampson's motive in charging Willie Graham with rape was questioned in his subsequent petition for clemency: 'it was only when they were detected by the Mother of the Prosecutrix who came upon them in the woods, in the act, that the prosecutrix, to escape a whipping from her

Mother, said she was being raped'. Graham claimed he had given Sampson 'a small amount of cheese and crackers as payment for the consent which she gave to him'.⁶⁰ Graham's application was denied on 2 December 1909, but endorsements continued to reach the Board in subsequent years until he was pardoned on medical grounds in 1917.⁶¹ In 1914 Judge Minor S. Jones of Titusville had recalled that there were no witnesses, and while Graham had been advised to plead guilty by his lawyer, there had not been enough evidence for him to impose a sentence of death. Jones reflected: 'If he has been a good convict and so brought forth fruits meet for repentance, he ought in all human probability to be pardoned'.⁶²

Female non-consent was crucial in the prosecution of rape cases in Florida in this period because rape was defined in terms of the victim's consent rather than the perpetrator's conduct.⁶³ Because rape requires both non-consent and criminal intent, evident of physical resistance was required. According to the 'utmost resistance' standard, a rape victim had to fight her attacker tooth and nail in order to uphold the veracity of the rape charge. In one incident, 'the little girl fought like a tiger, so she says, as long as she had any strength, but the brute choked her into submission'.⁶⁴ Lacerations and blood stains on both victim and perpetrator made the criminality of the act more comprehensible to judges and jurors (who had ultimate discretion in such matters) and spelled rape in popular opinion, and so were important evidentiary indicators of non-consent. In rebutting claims of mendacity levied against eight-year old rape victim Hattie Dargan in 1898, Judge Call noted:

If she had been the immoral character claimed in the affidavits then certainly she would not have exhibited the marks of violence that

she certainly did immediately after the time she claimed she had been raped and at the trial three months later. Nor could she have properly borne the reputation for want of chastity that the affidavits allege.⁶⁵

Susan Estrich highlights the legal paradox of this evidentiary rule in that a body/system of law that 'treated women, in matters ranging from ownership of property to the pursuit of the professions to participation in society, as passive and powerless, nonetheless demanded that in matters of sex they be strong and aggressive and powerful'.⁶⁶ Evidence of utmost resistance, however, did not always represent conclusive proof, as Judge Call's observation highlights, while in 1902 the Iowa Supreme Court decided: '[T]he existence of marks and bruises on the person do not alone tend to point out the person who caused them; and while the evidence of complaint by prosecutrix, if recently made, has uniformly been received, it has never been regarded, unless forming part of the *res gestae* original or independent evidence'.⁶⁷

In many cases, medical evidence played a crucial part in determining the authenticity of a complaint of rape, thus physicians were often key witnesses in trials involving sexual violence.⁶⁸ Elizabeth Anne Mills argues that physicians' interpretations of legal definitions of rape and evidentiary rules of force, resistance and consent also differed significantly from those of lawyers and judges. For example, while physical injuries were taken as 'tangible proof' of rape, 'moral force' (including the threat of physical violence and its impact on the victim's ability to resist), was more controversial as many medical authors 'insisted that few rapes occurred without a victim's consent if she was healthy and truly unwilling'.⁶⁹ The need for vigilance in the face of unfounded or false charges was emphasised in medical journal articles:

The physician engaged for the preparation of testimony in alleged case of rape has a massive burden of responsibility heaped upon him. There are so many factors which play a part in altering the physical evidence, that he must ever be on his guard lest some of his findings are misinterpreted or some fraud has been so subtly practised that he may be led to a misinterpretation of his actual finding. The fact that the liberty, perhaps even the life, of the accused is in jeopardy renders the correct interpretation of the physical finding noted by the physician of the utmost importance.⁷⁰

Medical writers warned that women were shrewd and devious enough to fabricate physical evidence by smearing semen on genitals, inserting blood-saturated sponges into the vagina, or by inflicting injuries on limbs and genitals in order to corroborate their charges. Some physicians were reluctant to testify against alleged rapists even when forensic evidence indicated the defendant was guilty.⁷¹

Evaluating physical evidence of rape was crucial in the prosecution in November 1897 of William Golden for the rape of eight-year old Hattie Dargan. Physicians were directed by Judge Thomas A. Hall of the Nassau County circuit court to examine the victim for vaginal trauma, and both victim and defendant for signs of syphilis.⁷² By the late nineteenth and early twentieth centuries, physicians generally cited three positive indicators of criminal sexual intercourse having taken place: genital lacerations, bruising or tearing of the hymen; the presence of spermatozoa in or around the genitalia; and the presence of venereal disease.⁷³ Although the presence of venereal disease in both victim and attacker was deemed 'absolute proof', the incubation periods of venereal diseases such as gonorrhoea and syphilis had to be taken into account and tests were required immediately after an alleged assault in order to determine if the female complainant had been infectious prior to the alleged rape.⁷⁴

Even before Judge Hall passed sentence on William Golden, Mollie Bass,

mother of nine-year old William Bass, had submitted an affidavit, on 20 November 1897, in which she alleged that her son had been sexually active with Hattie Dargan on a bed of straw in nearby woods, and that William had contracted 'a bad disease' from Hattie, evidenced by sores 'in his groin and sores on privates'.⁷⁵ One physician, R. P. N. Richardson, reported finding lacerations to Hattie Dargan's genitals, that she was suffering from syphilis, 'and was having a syphilitic [sic] eruption, and that such eruption he judged from indications to be of old standing'. He reported finding no evidence of syphilis on Golden.⁷⁶ However, another white physician, D. G. Humphries, also directed by the court to examine Hattie Dargan, denied there was physical evidence of rape or syphilis on the complainant. In his opinion, while in the courtroom Hattie Dargan had 'shuffled from the witness chair to her seat . . . such was, most positively, not caused by or due to any such laceration or tearing [of the vagina], but that he would judge the same to have been due to the girl being chafed, as she was filthy in the extreme'.⁷⁷

The presence of physical evidence in child victims generated debate among physicians: Was full penetration of a child possible? Were vaginal discharges, whose presence could indicate the existence of venereal disease such as gonorrhoea, transmitted through the act of carnal knowledge, or could they indicate the presence of a leucorrheal infection often caused by worms or general uncleanness? Mills notes that physicians had trouble deciding whether a child's vaginal infection was venereal and evidentiary, or leucorrheal.⁷⁸ In a similar case, defence attorney Sam Fletcher argued there was no physical evidence to substantiate a charge of rape against his client Joseph T. Jordan as the child

victim's undergarments had not been stained and it was physically impossible for an adult man to penetrate a female child without 'rupturing the parts'.⁷⁹ Medical writers articulated public concerns over accusations from children, some of whom were described as having 'active imaginations'. They charged that adults coached their daughters for purposes of blackmail, or injured their children to provide necessary corroboration, while others were 'innocently misled' into believing their child had been raped because of symptoms such as vaginal discharges. The absence of physical evidence suggested that parents and children could be equally mendacious.

The importance of 'character'

Essentially it was believed that a rape could only take place against a victim of previously chaste character. Southern courts demanded that female victims should be respectable, and have been virtuous and chaste. Previous chastity in the complainant was crucial as it was viewed as a legitimate indicator of consent, or measure of the authenticity of the rape accusation, based on the notion that an unchaste woman was less likely to withhold her approval and more likely to lie about it than a virtuous woman.⁸⁰ A pre-Civil War Florida Supreme Court ruling, *Cato v. State* (1860) determined that, 'the accusation of rape should be considered in light of the woman's active sexual history'.⁸¹ A female rape victim who was not as 'chaste' or 'virtuous' or 'respectable' had less opportunity to seek redress in the courts. A subsequent Florida Supreme Court ruling of 1895 declared:

On a trial for rape, the character of the prosecutrix for chastity, or want of it, is competent evidence as bearing upon the probability

of her consent to [the] defendant's act; but the impeachment of her character in this respect must be confined to evidence of her general reputation, except that she may be interrogated as to her previous intercourse with the defendant, or as to promiscuous intercourse with men, or common prostitution.⁸²

The term 'bad character', which appears frequently in court records, petitions and letters, denoted a woman's race and class, and carried strong sexual connotations for black and lower-class white women. A popular strategy by defence attorneys was to depict complainants as 'bad characters' whenever possible in order to shift blame and responsibility from the aggressor to the victim.⁸³ Nineteenth-century sociologists and criminologists such as Havelock Ellis and Cesare Lombroso characterised criminal women as morally and mentally degenerate, atavistic, over-sexed, overtly masculine and a serious danger to public morality. Similar labels were applied to non-criminal black and lower-class white women (Stephenson was white) whose behaviour contravened norms of respectable or appropriate behaviour.⁸⁴

After Judge Hall passed sentence of death on convicted rapist William Golden on 15 December 1897, white citizens of Nassau County, apparently motivated by incomprehension at the conviction, campaigned for commutation of the death sentence and pardon for this illiterate black prisoner.⁸⁵ Central to this campaign was the strategy of undermining the testimony of eight-year old Hattie Dargan through sabotaging her character and emphasising her want of chastity.⁸⁶ In early January 1898 Governor Bloxham was bombarded with affidavits from Nassau County citizens alleging 'the reputation of Hattie Dargan in this community is that she is a hoar [sic] and a girl of immoral character', who dispensed sexual favours to African American men in return for candy.⁸⁷ In his

own letter to Governor Bloxham, Golden's attorney, W. A. Hall, alleged that Dargan's parents had questionable motives for bringing about a prosecution, while several affidavits, including that of Major Devane, alleged that he 'had repeatedly been told that her mother, Annie Dargan, consented to the immoral life of her daughter', and profited from it.⁸⁸ The authors of such affidavits relied on rumours of the complainant's character and conduct from the neighbourhood gossip network. Affiants in this case relied on hearsay to allege improprieties on the part of Hattie Dargan, and only one of the affidavits was penned by a black male who risked community sanction when he claimed he had been criminally intimate with Hattie Dargan.⁸⁹

Nevertheless, prominent Fernandina merchant and real estate owner Samuel A. Swann felt compelled to set Governor Bloxham straight on a number of points. He concluded from a 'personal interview with R. Richardson who examined the girl at the trial that the vile strumpet was so diseased, the idea of rape of an innocent girl would seem preposterous'. Swann declared:

To protect the innocent, no punishment would seem too severe for a brutal rapist, but we who so well know the loose morality of the lower order of negroes, cannot but look upon the trial and unlooked for decision of the jury in the Golden case as an unjustifiable farce; and the act complained of - in this particular instance certainly one that could not call for the death of a man.⁹⁰

The use of the terms 'vile strumpet', 'dirty wench' and 'whore', that punctuate this and other letters indicate the prevalence of hostile class as well as racial attitudes as motivating the authors. The argument that the victim was not worth the continued ruination of a male offender's reputation appears frequently in pardon applications. A lengthy petition located in William Golden's pardon file contains the names of prominent Nassau County lawyers, ministers, merchants,

newspaper editors, sheriffs officers and County judge Thomas A. Hall, willing to cross class lines in support of this defendant, while maintaining more sharply drawn gender divisions.

In a four page letter to Governor Bloxham, Judge Call stated that the Golden case should be investigated before the death warrant issued, but he could recommend neither a pardon nor a commutation on the basis of affidavits received, given the strength of the physical evidence of rape. Noting that Golden was 'utterly destitute', Call suggested that State Attorney Hartridge could investigate the matter and 'make the expense very small' because:

I feel the responsibility to be very great and realize that no innocent man should suffer however low in the social scale he may be: And yet the crime of rape upon children must be put down: And that she was raped and brutally raped, there could be no doubt upon the part of those who heard the testimony of the physicians and could see the child.⁹¹

In response to Call's analysis, Golden's attorney penned his own four page summation of evidence and character analysis in which he further emphasised the contrasting social status between defendant and prosecutrix. He noted that he could secure further evidence from black and white citizens of Nassau County 'relative to the girl having the general reputation of a prostitute'.⁹² In a lengthy letter to the Secretary of the Board of Pardons one prosecuting attorney, G. B. Sparkman, criticised the strategy used in such cases:

The parties making this application seem to think it necessary to blacken the character of this child, in order to accomplish their purpose which course, in my opinion, is contemptible on their part and had I ever had any sympathy with them for the defendant such a course as that would have destroyed it. It makes no difference what the character of this child may have been and how very willing she may have been herself to the assault made upon her, under the law the defendant would have been just as guilty as if the child had resisted him with all the force she was capable of.⁹³

There was, however, no minimum age requirement to the term 'bad character'.

It appears that a delegation of Nassau County citizens, taxpayers and voters met with Governor Bloxham on 14 January 1898 to appeal personally for clemency for William Golden.⁹⁴ As a result, Bloxham responded to Judge Call's suggestion, approved a further reprieve of sixty days from 1 February 1898, and invited the State Attorney to investigate.⁹⁵ Six weeks later, Hartridge noted that while four witnesses swore to Hattie Dargan's bad character, the only witness who claimed to be criminally intimate with her reported an incident that occurred after Golden had been tried and convicted. He concluded: 'There are some facts in the case that I can not reconcile with the innocence of the defendant, and for that reason I can not recommend a full pardon, but do recommend a commutation of the sentence from death to life imprisonment or imprisonment for not less than ten years'.⁹⁶ Governor Bloxham responded to public pressure by commuting Golden's sentence to one year at hard labour on 18 March 1898.⁹⁷

Golden was a lower class African American defendant in a rural north Florida county who was able to secure crucial community support for his clemency plea. Community members were willing to cross class and racial divides to offer tangible and crucial patronage for the defendant and to isolate the victim and her family. That a violent sexual offence had taken place was never really in dispute. The central issue was whether Golden should suffer first the death penalty and then a term of life imprisonment for assaulting a child whose reputation made it impossible for her to be regarded as a legitimate victim with a legitimate grievance in the popular imagination. Her reputation for alleged promiscuity lessened the likelihood of consent having been withheld in the eyes

of rural Nassau County residents even though children under age ten lacked the ability to consent to intercourse in the eyes of the law. In Florida, the hardest sexual violence cases in which to achieve long-term redress for the victim were those in which the victims were children. If the victim had been white, however, Golden would almost certainly have been executed, but this was an intra-racial case and in such circumstances, the desire to control women's sexual behaviour collided with the need to maintain the subordination of the black community, and the Board had to decide which was the more pressing. The Board could justify its actions in commuting Golden's sentence on the grounds that an extensive investigation of the facts and evidence had been made, and that the decision to commute the death sentence to one year at hard labour was not made in haste, but after careful deliberation. Placating the white residents of Nassau County was ultimately more important than providing the rape victim with recompense or justice.

It is difficult to evaluate the motivations of supporters of pardon applicants. Some were motivated by a combination of ties of kinship, friendship, financial interest, paternalism, humanitarianism and misogyny. Sykes Williams was convicted of raping Lular Reynolds in June 1889 and sentenced to life imprisonment by Judge Baker of Duval County. Twenty years later, in 1910, Williams's case was taken up by John T. Lewis, Supervisor of State Prisons at Oklawaha, and the Reverend L. C. Griffin, ex-State missionary of Florida and Marion County public school teacher, of Belleview, Florida. In a letter addressed to Governor Gilchrist in February 1910, Griffin declared: 'I am interested in his case from a humane stand'. He provided references for himself from H. C.

Sistrunk, City Clerk of Ocala, and R. R. Carroll, business manager of the *Ocala Weekly Star* newspaper. Griffin also submitted a petition requesting clemency for Williams with the signatures of forty-eight prominent Baptist missionary society members and office-holders.⁹⁸ His request sparked crucial correspondence between himself and G. T. Whitfield, secretary of the Board of Pardons. In the absence of anyone to contest the application and in the face of such strong support, Sykes Williams was granted a conditional pardon on 20 May 1910.

Butler Hall's application for pardon was directly assisted by the Commissioner of Agriculture. In one letter of March 1896, addressed to the secretary of the Board of Pardons, his colleague David Lang, Wombwell states: 'I have known Butler Hall for more than ten years and have found him to be an exceptionally good negro'.⁹⁹ In a second letter he contends: 'Hall has been an exceptionally good convict and I have never thought him guilty, and he has been in the prison now ten years, a sufficient [time] for an ordinary crime; and has always been an obedient and faithful convict'.¹⁰⁰ Letters of recommendation from employers, white persons of social standing, camp guards and captains had weight with the Board, especially when the applicant's good character and respectability were emphasised and the victim's bad character and immorality were held up for community scrutiny and criticism. Further, if a Board member was actively involved in promoting a particular clemency plea, despite the obvious clash of interests, it must have been almost impossible for his colleagues to refuse to grant an application in such circumstances.

Respectability, rape and class

In March 1909, during the Spring term of the Circuit Court of Levy County, fifteen-year old Ella Cottrel testified that William Adams, a forty-year old school teacher at Perry Academy, had intercourse with her on 3 April 1908, 'in a barn on her father's place in Levy County, Florida'.¹⁰¹ The complaint against William Adams was brought by Ella's father, Charley C. Cottrel, possibly when Ella was found to be pregnant.¹⁰² At the trial, William Adams contended that from 31 March 1908 to 3 April 1908 he was working fifteen miles from the Cottrel farm for Daniel Strong, and did not go near the Cottrel farm until 10 April.¹⁰³ However, Adams was convicted on 17 March 1909 of having carnal intercourse with an unmarried female under eighteen years of age. He was sentenced to two years imprisonment at hard labour and dispatched to the convict lease, but would spend much of his term in the State Prison Hospital camps at Ocala.

In applying for pardon later in 1909 (assisted by William C. Hodges who had taken the case shortly after Adams's conviction), Adams argued:

Your petitioner represents that he is a black man and that the prosecutrix is a black woman and that child which was born to the prosecutrix is a mulatto and further that the prosecutrix is a colored woman of bad reputation for morality in the community in which she lives, while your petitioner is a married man with a wife and two children and owns property both real and personal in Levy County, Florida.¹⁰⁴

Affidavits in Adams's pardon file indicate that he owned forty acres of land in Levy County¹⁰⁵ and had taught at Perry Academy for six months where Ella Cottrel had also been a student. In raising the issue of Ella Cottrel's reputation and the colour of her baby, Adams sought to highlight the demarcation between

the respectable African American community (represented by himself) and the non-respectable class (represented by Ella). One implication was that Ella Cottrel and William Adams subscribed to two different sets of sexual values. Despite postwar emphasis on chastity and monogamous marriage preached by black ministers and missionaries, some aspects of Southern blacks' slave-based sexual value system survived after emancipation, and included continued acceptance of premarital intercourse and birth of children outside of marriage, and the notion that reproduction as not necessarily the sole purpose of intercourse, aspects from which Adams (with the help of his white lawyer) was seeking to distance himself.¹⁰⁶

In fact, the pardon strategy was to contrast starkly the social status of offender and complainant, to Adams's advantage. B. N. Thompson, Principal of Perry Academy, provided Adams's attorney with evidence of this when he described Adams as 'a man worthy of confidence and of high moral character'. In contrast, Thompson termed Ella Cottrel as someone who 'was very fond of the young men, and upon several occasions I had to scold her, after taking leter [sic] of very immoral visit from her', and 'Mr Adams is too good a man to serve the time out for such a character'.¹⁰⁷ The theme that Adams was a fit subject for leniency emerges in other letters to the Board of Pardons requesting clemency for William Adams, and in the letters of support for William Golden. While respectability was derived from conforming to certain behavioural standards, the commission of an offence did not always strip the offender of his credibility; it could provide grounds for a reduction in sentence or pardon.

The case for extending clemency to Williams Adams appears to have hinged on his character rather than on his innocence.¹⁰⁸ Most letters on file

indicate that the authors believed Adams had carnal intercourse with Ella Cottrel, but argued that his previous character should exonerate his actions, in other words, he was a 'respectable' offender. Sheriff E. Walker of Levy County, advised George Whitfield, Secretary of the Board, that he had signed a petition requesting a pardon for William Adams, not because he thought Adams was innocent, but because Adams 'has a very respectable family and I learn that the girl with whom he was charged with having carnal intercourse has gone wild with all negro men and some white if I have been informed right and I do not know that it would hurt the community if he was to be granted a conditional pardon'.¹⁰⁹ Representative W. Epperson of Levy County also lent his support to Adams whom he had known since the latter was a boy and whom he considered 'far above the average of the younger negroes or I might say he is an exception - he is polite and stands well with the white people, he pays his debts and as far as I know this is his first violation of the law'.¹¹⁰

A central issue was Adams's abuse of his position of responsibility and trust within Levy County, and no attempt to justify his release by basing responsibility for his actions on the contrasting characters and social standing of victim and offender could obscure this. This point was not lost on A. P. Hardee, Clerk of the Circuit Court of Levy County, who wrote that he believed Adams was guilty beyond a reasonable doubt, and could not recommend granting even a conditional pardon:

you are advised that I have been personally acquainted [sic] all my life with both Adams and the prosecuting witness the father of the girl and both parties have always lived in Levy County and have been very respectable [sic] negroes and law abiding and industrious, both parties about on a par as to their means of gaining a livelihood, but I rather think the prosecuting witness the better

principled negro and in my opinion if there ever was a righteous conviction or plain case according to the evidence produced in open Court this is one.¹¹¹

State Attorney J. M. Rivers went further in condemning Adams's conduct in what he termed an 'aggravated case':

I have had other information since his conviction that tends further to satisfy me that there is no question of his guilt, and the only question that could possibly arise, is whether or not his punishment is excessive. The point, I beg to state that in consideration of the fact that he betrayed the confidence of a girl less than 15 years of age, and also of her father, who was his neighbor and close friend, and in consideration of the fact that he is a settled man and is an intelligent negro and understands well the gravity of his offence that the punishment given him by the Judge of our [sic] Circuit Court is not excessive.¹¹²

In April 1910, camp physician B. V. Elmore confirmed that Adams had tuberculosis and requested that he be pardoned.¹¹³ An application for commutation of Adams's sentence had been passed over on 1 July 1909 and denied on 7 October 1909, but at the Board meeting on 6 May 1910 his sentence was commuted to expire on 1 June 1910, indicating that his consumptive condition was a decisive factor.¹¹⁴ Other factors in Adams's favour included his character, that he was a married property owner with roots in the local community, and that he did not fit the popular image of ravenous black brute predisposed to commit sexual offences. According to the official record, Adams's sentence was commuted because of '[s]trong evidence being presented to this Board tending to show that the negro girl concerned herein was a very loose character; and it appearing that applicant was a thrifty negro who had acquired considerable real and personal property, and had previously borne an excellent reputation'.¹¹⁵ Conley observes: 'Unless a man of respectable reputation proved that he had renounced society's standards on a permanent basis he was not perceived as an

ongoing threat to the community'.¹¹⁶ The pardon board could make higher allowances, therefore, for respectable persons' transgressions in some cases, and designate an offence as an isolated action that was out of character, rather than as evidence of innate depravity or degeneracy.

Central strategies in pardon applications for offenders convicted of rape relied on challenges to the character of the female complainant partly in order to undermine medical testimony, and to a larger extent than in many murder appeals, on the argument that the offender had been denied due process, usually because the arrest and conviction had been achieved against an intimidatory background thick with threats of mob justice. For other rape defendants, however, class prejudices could also work to their disadvantage, as in the case of white labourer Joseph T. Jordan who was convicted of assault with intent to rape nine-year old Beatrice Stephenson on 25 February 1895 in a banana grove in Bowling Green as she walked home from school. Jordan was arrested that evening and held in Arcadia jail with a 'strong guard of armed men' to prevent him from being lynched. It was grimly reported that the Circuit Court was due to meet during the first week of March when Jordan's case would be considered 'unless Judge Lynch gets his work before that time'.¹¹⁷ Jordan's attorney, Sam T. Fletcher, blamed the hysteria and threat of lynching on a few 'hot headed individuals' in Bowling Green, but confirmed that he had advised his client to plead guilty to assault with intent to commit rape because a mistrial or acquittal would have resulted in a breakdown of civil authority. He further alleged that Beatrice's father Charles Stephenson 'was extremely anxious to have Jordan out of his neighbourhood on account of his natural antipathy to the "Florida Cracker"', whom he had allegedly

threatened on a previous occasion.¹¹⁸ Charles Stephenson alleged that DeSoto County residents were 'advised to sign [Jordan's petition] by misrepresentations' which played on the prejudices of country people against Yankees like himself.¹¹⁹

Several attempts to undermine belief in the veracity of Beatrice Stephenson's allegation of rape and in the propriety of her character appear in the letters of support for Joseph T. Jordan. H. D. Sauls, a Bowling Green resident and a fellow pupil at College Hill School during the winter of 1894-1895, characterised Beatrice as an untruthful person who would have no hesitation in lying for criminal purpose.¹²⁰ A. J. Stewart, supervisor of College Hill School, stated that the following Spring, Beatrice had been prohibited from continuing her studies at College Hill School 'because of her very immoral conduct which was considered dangerous to the peace and dignity of the youth of said school'.¹²¹ In language that conformed to notions of lower-class female licentiousness, Sauls announced: 'I have seen said Beatrice Stephenson, of her own volition, take up her clothes, at school, in absence of teachers and show her entire nakedness to large and small boys alike with the boldness of a beast'.¹²²

Support from the 'good and law abiding citizens' of DeSoto County was crucial to Sarah Jordan's continued efforts to secure clemency for her husband. She sought 'Christian sympathy' for herself and her baby from Governor Bloxham in early 1897,¹²³ then when gathering signatures for a petition, she persuaded Joseph B. Wall of Tampa in neighbouring Hillsborough County of her husband's innocence. So convincing was her appeal that Wall agreed to represent Joseph Jordan without fee. Sarah Jordan, in contrast to her husband, lived up to

community-defined standards of Southern womanhood and demanded protection and assistance from chivalrous men of good standing, such as Judge Wall. Wall argued that Charles Stephenson had been trying to secure a tract of land on which he and his family were living that was owned by Jordan's mother-in-law, so devised the plan of falsely charging Jordan with the rape of his daughter in order to ensure he could buy the land, and that Beatrice had broken down when questioned to confess that her father had 'compelled' her to make the allegation of rape though Jordan was innocent.¹²⁴ Wall's efforts added weight to Jordan's campaign as pardon board members were reluctant to refuse the Judge of the Hillsborough Criminal Court of Record, a former president of the Florida State Bar Association, and one of the influential 'best men' of Tampa. Six months later, Jordan was conditionally pardoned on 10 April 1899.¹²⁵ The Board could rationalise its decision to pardon Jordan on the grounds that he had presented them with a plausible alternative story in which he was the victim of a conspiracy to defraud his family of land (thus highlighting the ties of the Jordan family to the Bowling Green community), while there were enough doubts surrounding the character and propriety of the victim to question whether any crime of rape had taken place.

A defendant's 'outsider' status was an often crucial factor which influenced the attitudes of the courts, juries, newspapers and public in assessing his guilt or innocence. In January 1894, A. Frasier, a sixty-five year old white shoemaker originally from Nova Scotia, was arrested on the complaints of five girls aged nine to thirteen years, who stated that they had visited Frasier's private quarters behind his cobbler shop in Tampa, had sat upon his knee and had lain on the bed with

him in return for money and candy. Frasier's tenant, C. H. Stevens, claimed to have witnessed Frasier 'taking liberties' with his young guests as he spied through the cracks in the wall from an adjoining room.¹²⁶ There was no evidence of criminal assault at this stage, but the day after Frasier was arrested, the *Tampa Daily News* announced:

A more horrible case of depravity and devilishness incarnate never came to light in this or any other state than has developed in this city within a few hours, and it is safe to say that had such diabolicalism been perpetrated in any other town [in] the State than Tampa the citizens would not have relegated the handling of the case to the slow and uncertain vindication of outraged law.¹²⁷

On 9 January 1894, in the Hillsborough County Criminal Court of Record (presided over by Judge Wall), five days after his arrest, Frasier was convicted of three charges of assault with intent to rape two female children and sentenced to three terms of twenty years to run consecutively. The *News's* editorial proclaimed:

The prompt conviction in the criminal court yesterday of Frasier, the would be rapist, was a grand triumph for law and order in this community. The crime attempted by this man was the most heinous that can be perpetrated in a civilized community and one that is usually met with speedier justice than can be applied by the courts . . . The prompt conviction and sentence of Frasier will go far to establish confidence in the power and justice of our criminal courts in the future.¹²⁸

The editor believed that Frasier would serve only a few years of his sentence because of age and health concerns, but within a year Frasier had begun a robust campaign for clemency, that would result in his receiving a pardon on 31 May 1895.

In a badly typed application to the Board of Pardons, Frasier argued that he was an old and dying man, that he was not guilty of assault with intent to rape but had plead guilty on the advice of Deputy Sheriff D. S. McKay after an

inflammatory article appeared in one of Tampa's newspapers, that he was suffering from a chronic disease that impaired his judgement at the time of the trial, and that he blamed Stevens for ill will toward him over the enforced collection of a debt owed to him by Stevens. If pardoned, Frasier offered to go to his sister's house in Missouri.¹²⁹ Deputy Sheriff McKay confirmed that he had advised Frasier to plead guilty, but stated that Frasier had consented because he had no lawyer to guide him and no money to employ one, and feared for his life at the hands of a lynch mob.¹³⁰ In a separate affidavit, McKay stated: 'I was afraid he would be lynched . . . I do not believe the old man was in his right mind but when he was arraigned he pleaded guilty and I believe he did so because of his weak mind and because he was afraid of a violent death at the hands of the people . . . He was very weak and sick at the time his case came on for trial and at the time the offense was alleged to have been committed'.¹³¹ An undated petition addressed to the Honorable Board of Pardons from citizens of Tampa expressed the belief of the petitioners that Frasier was innocent 'as at the time of the alleged occurrence he was very feeble and for a long time previous had been very childish.'¹³² In other words, Frasier's actions were the result of an error of judgement rather than an indication of innate depravity. In contrast, the actions of George Barker appeared to indicate degeneracy and depravity rather than an error of judgement.

Three years later in Duval County, in December 1897, fifty-seven year old mail carrier George Barker was sentenced to twenty years imprisonment for assault with intent to rape ten year old Mabel Bettelini in October 1897, after enticing Mabel into Red Men's Hall in Jacksonville (Barker was reported to be a prominent

Red Man).¹³³ When news of the assault broke in early October 1897, there were rumours that Barker had kissed and fondled other small girls with promises of candy, and threats of whipping if they reported him. After Mabel's mother had abandoned plans to horsewhip Barker she contacted State Attorney Augustus G. Hartridge.¹³⁴

Barker was notified of the charges by postmaster Clerk after Mrs Bettelini had complained to Clerk by letter. He claimed Mabel had led him on. He fled Jacksonville shortly before sheriff's officers were able to serve a warrant for his arrest, but was apprehended several days later at Fairbanks, a small railway station between Jacksonville and Waldo, when he boarded a train and inadvertently sat next to Sheriff I. W. Fennel, who was in possession of his description. Barker was described in the *Times Union* as 'a raw-boned, weazen-faced, foxy looking man, about 5 feet 10 inches tall. His face is red, with sandy moustache, hooked nose and deep-set eyes. He was last seen wearing a dark frock coat'. A reporter from this newspaper visited Barker during his temporary stay in Alachua County jail and quoted the defendant's version of events: 'he was sitting on the porch of Mrs. Bettelini's house when her little girl came up and climbed into his lap. He denied having made an assault upon her, but said that he took some liberties with her. He stated that he had a great passion for children, and that this caused him to touch the child.'¹³⁵ Barker maintained that he was innocent of the charge of rape. A month later, on the morning of 28 November, after eighteen hours of deliberation, a jury decided he was guilty of assault with intent to rape,¹³⁶ and Barker received the maximum sentence of twenty years one week later after a defence motion for a new trial was dismissed by Judge Call. The announcement that: 'To

a man of Barker's age and physique, twenty years in the phosphate camps of the State virtually means life imprisonment' proved premature as Barker, apparently, made a successful escape from the convict lease on 23 July 1902.¹³⁷

The cases of Jordan, Frasier and Barker all involved older men taking advantage of young girls under the age of ten years or the common-law age of consent, but each yielded varying results. Jordan claimed no offence had taken place and this labourer was able to draw on crucial community support in a rural county setting. In small rural communities, apprehension of an offender was possibly more likely as inhabitants knew each other and each other's business, and were wary of strangers. Similarly, local officials were more likely to be acquainted with victim, accused and witnesses, and to be cognisant of their reputations and social standing as letters to the pardoning board suggest. In contrast, Frasier and Barker committed their offences in the urban settings of Tampa and Jacksonville. While Jordan was a labourer, Frasier was an artisan and Barker a government employee. The actions of men with some position in the community were often popularly regarded as more serious, and so encountered greater public hostility and condemnation. The 'criminality' of an offence could on occasion increase in line with the greater social status of the offender. Frasier and Barker may have hoped that in the anonymity of the city their crimes may have been harder to detect. Urban offenders without benefit of support from a closeknit rural community had to draw on alternative sources of support. Frasier received crucial assistance from the Hillsborough County Deputy Sheriff. It is not clear who orchestrated the petition effort and whether the signatories were former customers of Frasier or other merchants. Frasier did not deny that he was guilty

of inappropriate conduct but could explain his actions as a form of feeble-mindedness.

In a patriarchal and hierarchical society like that of Florida, rapes, attempted rapes and carnal knowledge offences committed by middle-class or wealthy defendants rarely came to the attention of the courts, but there were exceptions, and juries could be very unsympathetic toward middle-class and wealthy defendants. Sexual transgressions on the part of respectable middle-class men could be dismissed as improprieties rather than serious crimes that undermined the social order, except in cases where the evidence was too serious and too public. At the same time, if moderation, discipline and self-denial were increasingly important to constructions of Southern white manhood, and a central facet of this ideology revolved around the belief that white men, because they were socially superior, had a duty to protect weak and virtuous women, this may explain why pardon board members had difficulty in dealing with offenders of a similar social standing. Whereas they could excuse lower class male assaults against women on the grounds that these men were less able to control their passions, they reserved greater hostility for white offenders who were perceived to have abused their privileged position, as in the case below. Such cases also served to uphold due process and the notion that the law applied equally to all classes in order to ensure that the criminal justice system maintained a popular semblance of credibility and effectiveness.

One of the thickest pardon files of this period, and one of the few that contains photographs, is that belonging to forty-five year old Tampa doctor, Guil M. Howsley. Howsley was convicted in the Tampa court of having carnal

intercourse with Anita Castellanos, his thirteen-year old sister-in-law, in September 1913, and given the maximum sentence of ten years' imprisonment at hard labour, believed to be tantamount to a life sentence because of Howsley's 'advanced age', 'either dipping turpentine or digging phosphate'.¹³⁸ It had already emerged that Howsley was wanted on charges of criminal intercourse in Texas, from which he and Anita Castellanos had fled, and for desertion of his wife and children in Hillsborough County, Florida, and there was also a federal warrant charging him with 'white slavery' under the terms of the 1910 Mann Act.¹³⁹

Under the headline, 'GETS TEN YEARS FOR RUINING YOUNG GIRL', it was explained in the *Tampa Morning Tribune* that Howsley had not been charged with the capital offence of rape, 'because of the inability of the child to remember her exact age at the time the doctor first began his relations with her'. In an attempt to undermine the complainant's credibility, Howsley's lawyers adopted the line of defence that Castellanos was lying and had been induced to fabricate the story of carnal intercourse.¹⁴⁰ However, Howsley's actions had contravened central norms of acceptable male behaviour in a much more serious manner than those of lower class white defendants. As Howsley had failed dramatically to live up to societal expectations about appropriate and respectable behaviour and brought the ignominy of criminal charges against himself thus dishonouring both himself and his family, jurors were not moved to acquittal or leniency. He was also originally from Missouri and not of Anglo-American origin so was technically an 'outsider' on at least two counts, and it was perhaps easier for Floridian juries to reserve the severest sanctions for immigrants or persons of foreign descent, the exception to this being African American defendants in

interracial rape cases.

Nevertheless, immediately after conviction, Howsley's friends and supporters began a robust campaign to liberate him from the State Prison System. Through their letters to the Board of Pardons they sought to persuade members that Howsley was a gentleman worthy of consideration, and in contrast to other applications for pardon, did not attempt to undermine the veracity of the prosecuting witness (except in one letter from Gudelia Howsley). For example, R. L. J. Bird of Plant City informed the Board that he had known Howsley and his family for eight years and, 'as I am a voter and tax-payer of Hillsboro. Co. I want to add my endorsement of such action [pardon] . . . I am sure there is not a more honourable, conscientious and law abiding man in this or any other County in the State'.¹⁴¹ Captain H. L. Green of the State Prison Farm at Raiford was equally praiseworthy when he described Howsley as 'a truthful, reliable and courteous gentleman' who 'is far above the average prisoner in every respect. He is an intelligent and capable man, and his conduct has indelibly [sic] stamped him in my mind, as a man of good breeding, who cannot be contaminated by evil endorsement'.¹⁴²

In his own lengthy communications with Governor Park Trammell and Secretary of State R. A. Gray, Howsley emphasised the pains he was taking to redeem himself:

During the past two years I have endeavored to build up a reputation that would gain for me my freedom, so with that in view I have interested myself in the welfare of the prisoner and the economy of the State's exchequer, hoeping [sic] by doing so of securing your voluntary clemency at the first opportunity; the Board meeting just past. The disappointment of this has been most keen, for, not only did I expect my liberty at your hands but every inmate here was positive, as well as the management, that I had earned my

freedom and would get it. This failure of mine has discouraged many of our best men here for they claim there is no use trying to be a man when the State offers no encouragement. Now Governor, Let me appeal to your good judgement . . . Would it not be more to your everlasting credit to help uplift a fallen human being, than it would be to sit idly by and see him completely crushed? Dont you realize that a man holding the exalted position that you do has a great influence over the minds of men; and, can't you readily perceive that an act of kindness on your part, might be the stimulus which would elevate and save many a prospective citizen that would otherwise be lost . . . I believe every man who has the manhood in him to do what is right should be given another chance to make good, and, Governor, I believe you think the same.¹⁴³

No references to the circumstances of Howsley's incarceration appear in these letters. In fact, Anita Castellanos was rendered invisible to the public record after the conviction. As the victim and the details of the crime faded from public memory, it became increasingly clear that it was not Howsley's action in committing the sexual assault that had damaged his reputation, but his subsequent imprisonment at hard labour with common criminals.¹⁴⁴

For a white convict of means, such as Howsley, having to work as a forced labourer alongside African American and lower-class white males whose company he would probably avoid in normal circumstances, and whom he might otherwise regard with suspicion, hostility and disdain, was particularly shameful and degrading. Upper and middle class white male offenders could face severer sanction for their actions than black or white offenders of the labouring classes and were punished by juries composed of labourers, artisans and the lower middle class, for their abuse of the privileges of education, wealth and social standing, plus their arrogance and indiscretions. Their fall from grace was most painful, but they could recover much more quickly if they were able to maintain access to larger and more influential support networks. They could also play on the notion

that they did not deserve to be incarcerated with common criminals and therefore had learned their lesson more quickly. Howsley was not however a model prisoner. The punishment records of the Boca Grande Investment Company camp show that he received corporal punishment on three separate occasions between January and March 1914, for attempting to escape and 'laziness'.¹⁴⁵

Opposition to any effort to pardon Howsley was strongest immediately after the trial. H. W. David from Mart, Texas wrote to Governor Trammell in November 1913 to protest 'in the name of right, reason and justice, and outraged innocence on behalf of the women and girls of the country' against any extension of clemency to Howsley, 'lately and justly convicted'. David confidently warned that the grand jury of Limestone County, Texas, would indict Howsley in January 1914 for criminal intercourse.¹⁴⁶ However, over the next two years opposition to clemency for Howsley dissipated, thus ensuring that the efforts of his wife and friends to persuade the Board of Pardons to grant him a conditional pardon would come to a successful conclusion on 15 July 1916. The Board subsequently restored Howsley to full citizenship by way of a full pardon a year later. Ten years later the *Florida Gazetteer and Business Directory* still listed Guillermo Howsley as a practising physician in Tampa. His case illustrates that in many ways 'respectability' was a term with uncertain boundaries in late nineteenth-century Florida, and the rules for respectable behaviour varied according to the perceived motive of the offender, whether the criminal actions took place in private or public, and the degree to which the offender was accepted and supported by members of the local community.

While Howsley was able to furnish the Board with the necessary

recommendations and provide evidence of high good character from persons of influence and standing in and around Tampa, he also appealed for clemency on the basis of his service to Florida's prison system. In his message to the State legislature of 1911, Governor Gilchrist advised that a prisoner who had rendered 'extra meritorious conduct' to the State Prison System should be 'recommended to the favorable consideration of the Board of Pardons for increased commutation or pardon'.¹⁴⁷ For some prisoners, their assistance in preventing escapes or in recapturing escapees brought them favourable consideration. Howsley's 'extra meritorious conduct' occurred during a typhoid epidemic in the convict camps in 1914 in which he was able to use his medical knowledge and expertise to full effect. Captain H. L. Green praised Howsley's 'inestimable value, both to the State and to the prisoners' as 'a physician and surgeon'. Green argued that Howsley's 'great usefulness being considered, together with his other gentlemanly qualities, entitle him to especial consideration at the hands of your Honourable Body. And should you deem it expedient to take the same view of the man as I have, I will consider it a personal favor that will not be forgotten'.¹⁴⁸

Howsley was not alone in believing that offenders should be given another chance to make good, to redeem themselves in the community. While rape victims undoubtedly suffered physical injury and mental trauma for years after the assault, the notion that rape 'ruined' a woman for life is challenged in a handful of letters to the Board requesting clemency from a victim, her relatives, and others. For example, Julia Lawrence of Clay County wrote to her sister shortly after Frank (Charles) Richardson was convicted of raping Julia's daughter Hester Lawrence in 1902 and sentenced to death.¹⁴⁹

Sarah, I am more than sorry for that man in jail do please go there to jail and say that I the girl [sic] mother appeal to all and even the court to turn him loose for hester is married she got married last night while I went to sell medicine. Poor man I hope I can save his neck anyway she married without my concent [sic] went to some one else house.¹⁵⁰

Richardson's case was considered by the Board at a meeting on 30 June 1902, but his application for pardon was refused. Such communications, many of which use formulaic language and standard arguments for release, and were actually penned by others, provide unique access, nonetheless, to the often inaccessible views of a largely illiterate and silent *lumpen proletariat* whose lives were profoundly affected by one of the most pervasive and pernicious institutions of the New South. In his only personal communication with the Board of Pardons, Butler Hall requests a commutation of sentence or pardon as he believes he 'has sufficiently suffered punishment for said offence'.¹⁵¹ This is echoed in letters from Hillman Franklin, and from Ida Franklin now Ida Pollock, requesting that the Board grant Butler Hall a full and free pardon.¹⁵² E. B. Calhoun repeated Hillman Franklin's statement that Butler Hall and Ida Franklin 'had been very intimate' for two or three years prior to her complaint of rape, 'and Ida's conduct since the conviction of B. Hall had lead [sic] [Franklin] to believe that Butler was not guilty and now did not believe Butler was guilty [sic]'.¹⁵³ Ida Pollock merely stated that Hall had been punished sufficiently for his crime. Hall received a conditional pardon on 4 January 1899.

Even in cases of inter-racial rape where the defendant was African American, complainants and other community members sought to influence the decisions of the Board of Pardons in his favour. Ed Gadsden's application for pardon in 1917, ten years after his conviction and sentence of twenty years

imprisonment at the Hillsborough Criminal Court of Record, received support from the victim's father, J. M. Murphy of Plant City. Murphy informed the Board that his daughter was 'now grown and married, and I think so far as punishment is concerned he has been punished enough and I will recommend that the Board of Pardons grant him his pardon'.¹⁵⁴ State Attorney George P. Raney based his support on the fact that Murphy had signed a petition requesting clemency for his daughter's attacker. Raney also admitted to having had some doubts about the defendant's guilt. However, 'the fact that the father of the girl is signing a petition for the pardon of the defendant, the girl being white and the defendant a negro, satisfies me now that the father must at least entertain very grave doubts of the guilt of a defendant. Under these circumstances, I certainly think the defendant should be pardoned'.¹⁵⁵ Rather than automatically raising doubts about the conviction, these letters also suggest another function of the pardon process: it enabled the victim or relatives some influence in determining the length or severity of punishment for their attacker.

The law provided white middle class males with the means to reinforce dominance, and to restrict black and lower class freedom, but while 'black women and poor white women encountered negative stereotypes that reinforced their inferiority in racial and class hierarchies',¹⁵⁶ this is not to say that black, lower class or female Floridians were not able to challenge the system to take account of their views and circumstances. In fact, female complainants and others were using the criminal justice system to file complaints and seek redress, and the courtroom and pardon board to initiate discussion of the boundaries of respectable Southern womanhood. Pardon board records of intra-racial sexual violence cases

challenge the image of black (and lower-class white) women as completely 'powerless pawns in a violent racist order designed by and for white men'.¹⁵⁷

The Board's decision to commute a death sentence or reduce a term of imprisonment was based not only on the circumstances and context of the act of sexual violence, but also on the perceived character, respectability and chastity of the victim. In acts of sexual violence, defendant and victim were judged against carefully constructed notions of appropriate and respectable conduct, that were rooted in the class and racial prejudices of the men who ran Florida's criminal justice system. Given the parallel ways in which the characters of poor white women and black women were assessed by community members and evaluated by Board members, it is clear that class as well as racial divisions shaped the Board's attitudes toward sexual violence. Respectability could and did influence judges, jurors and pardon board members, for example, in the view that persons of good reputation with ties to the local community had fewer tendencies to recidivism and thus were frequently deserving of clemency. The status of both victim and offender was crucial in determining the post-conviction experiences of the latter, thus 'respectability' effectively meant that regularised and impartial justice was incompatible with the function of Florida's criminal justice system. But, 'a criminal justice system that failed to recognize the distinctions among persons would have been seriously at odds with the social hegemony', and 'a justice system that lacks the flexibility to consider such factors as malice, motive, and prior offenses would be blatantly unjust'.¹⁵⁸ The problem was that the law in Florida was not an impartial entity, but one that was subject to race, class and gender manipulation that could undermine its credibility and effectiveness for

black and lower-class white victims of sexual violence.

1. Ted Ownby, *Subduing Satan: Religion, Recreation, and Manhood in the Rural South, 1865-1920*, (Chapel Hill, N.C. and London: The University of North Carolina Press, 1990), pp. 12-17, 68, 162.

2. Ibid., p. 14.

3. Ayers, *Vengeance and Justice*, p. 20.

4. Carolyn A. Conley, "Rape and Justice in Victorian England," *Victorian Studies* 29 (Summer 1996): 527. For a discussion on defining respectability and its relation to class in Victorian Kent, see Carolyn A. Conley, *Unwritten Law*, pp. 4-9.

5. Conley, "Rape and Justice," p. 528.

6. Charles E. Rosenberg, "Sexuality, Class and Role in 19th-Century America," *American Quarterly* 25 (May 1973): 143.

7. Quoted in Anthony S. Wohl, "Sex and the Single Room: Incest Among the Victorian Working Classes," in Anthony S. Wohl, ed., *The Victorian Family: Structure and Stresses* (London: Croom Helm, 1978), p. 200.

8. Peter T. Cominos, "Late Victorian Sexual Respectability and the Social System," *International Review of Social History* 8 (1963): 33.

9. H. T. Kealing, "The Characteristics of the Negro People," in Booker T. Washington *et al*, *The Negro Problem: A Series of Articles By Representative American Negroes of Today* (New York: James Pott & Company, 1903), pp. 173 and 183. Kealing advocated: 'Industrial education with constant application, is the slogan of his [the Negro's] rise from racial pauperism to productive manliness'.

10. Elias, pp. 3-4.

11. Estelle B. Freedman, "Sexuality in Nineteenth-Century America: Behaviour, Ideology, and Politics," *Reviews in American History* 10 (December 1982): 197-198, 201, 210.

12. Ibid., p. 204.

13. Ibid., p. 210.

14. In passing a sentence of ninety nine years of imprisonment on Buddie Green in May 1900 (found guilty of an assault on a five year old child), Judge Wall announced: 'You made a brutal assault upon this child, and I feel sure that, if you were a person of higher intelligence that you seem to be, the jury would not have saved you from the gallows. It is the judgement of the court that you will be imprisoned in the state penitentiary, at hard labor, for the term of your natural

life'. See TMT 19 May 1900, p. 1.

15. Ownby, p. 169.

16. Ibid., p. 59.

17. Ibid., p. 39.

18. Ibid., p. 137.

19. J. M. Rivers to Mr. G. T. Whitfield, 21 August 1909, ACF 96/1292.

20. Quoted in Ayers, *Vengeance and Justice*, p. 252.

21. House Journal, 1907, pp. 62-63.

22. Conley, "Rape and Justice," p. 532.

23. Skillman, vol. 4, p. 3435. The common law age of consent of ten years was recognised when Florida adopted English law as the basis of its legal code at the first session of the Legislative Council in 1822, See *Florida Historical Quarterly* XI (April 1933): 186.

24. Skillman, vol. 4, p. 3583. *Laws of Florida, 1901*, ch. 4965 [No. 11], p. 111. Approved by Governor Jennings on 31 May 1901. *Revised Statutes of Florida*, section 2598 made carnal intercourse with an unmarried female under sixteen years a crime. A later Florida statute of June 1909 declared: 'Any male person who has carnal intercourse with an unmarried female, with or without her consent, who is at the time an idiot, lunatic, or imbecile, shall be deemed guilty of a felony, and, on conviction, shall be punished by imprisonment in the State prison at hard labor for not exceeding ten years, in the discretion of the court'. See Vance, p. 58.

25. Ownby, pp. 170, 174, 208.

26. Julie A. Allison and Lawrence S. Wrightsman, *Rape: The Misunderstood Crime*, (Newbury Park, C.A.: Sage Publications, 1993), p. 198. Because these elements are culturally and socially constructed, when the complaint of the female victim is dismissed by participants in the legal system, it is never dismissed on the ground that rape was legitimate in that case, it is usually dismissed on the grounds that the rape did not occur. See Sue Bessmer, *The Laws of Rape*, (New York: Praeger Special Studies, 1984), p. 229.

27. Rosemarie Tong, *Women, Sex, and the Law*, (Totowa, N.J.: Rowman and Allanheld, 1984), p. 91.

28. From "Experiences of the Race Problem. By a Southern White Woman," *Independent*, LVI (March 17, 1904): 593, quoted in Anne Firor Scott, "Most Invisible of All: Black Women's Voluntary Associations," *Journal of Southern History* 56 (February 1990): 1-22: 10.

29. J. Hillman to Hon. L. B. Wombwell, 19 February 1897.
30. RCA, 1905-1906, p. 339.
31. Ibid., p. 340.
32. Hall, *Revolt Against Chivalry*, p. 78.
33. Ibid., p. 148.
34. Ibid., p. 150. Nancy Maclean observes that by the late nineteenth-century the conviction among white southerners that black men had 'an incorrigible desire' to rape white women grew so pervasive that rape came to be referred to as the 'new Negro crime'. See Maclean, p. 142.
35. See Ken Driggs, comp., *Florida Executions List* (March 16, 1993), Florida State Archives, Tallahassee, Florida. For a discussion of racial disparities in sentencing in interracial rape cases, see Barbara Holden-Smith, "Inherently Unequal Justice: Interracial Rape and the Death Penalty," *Journal of Criminal Law and Criminology* 86 (Summer 1996): 1571-1583.
36. FTU 22 May 1909, p. 3.
37. Out of a total of 8,550 committals to the Florida State Prison System between 1890 and 1910, only sixty four (less than one percent) were offenders convicted of rape, and 140 (less than two percent) were offenders convicted of assault with intent to rape or attempted rape. See also Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South*, (Chapel Hill, N.C. and London: The University of North Carolina Press, 1995), p. 196. Bardaglio notes that freedwomen actively challenged violence against them by continuing to bring charges against their assailants, and that rape and attempted rape cases involving black complainants 'steadily appeared before the southern courts' in the last decades of the nineteenth-century. The significance of this is underlined in Laura Edwards's study of Granville county. See Laura F. Edwards, "Sexual Violence, Gender, Reconstruction, and the Extension of Patriarchy in Granville County, North Carolina," *North Carolina Historical Review* 58 (1991).
38. Statement of Evidence, no date, ACF 130/298.
39. Ibid.
40. *Davis v. State* (1904) quoted in Allison and Wrightsman, p. 266.
41. Application for pardon, D. E. Knight to Hon. Board of Pardons, 8 January 1911, ACF 188/1633.
42. Summary of Trial Evidence, p. 2, ACF 188/1633.
43. Testimony of Mack Wilson, Summary of trial evidence, pp. 2-3, ACF 188/1633.

44. Testimony of Vance Stokes, Summary of trial evidence, p. 3, ACF 188/1633.
45. Petition to Honourable Board of Pardons, 30 October 1911, ACF 188/1633.
46. Affidavit of H. Austin, 12 November 1913, ACF 188/1633.
47. Affidavit of M. J. Jones, 13 November 1912, ACF 188/1633.
48. Bardaglio, *Reconstructing the Household*, p. 72.
49. Conley, "Rape and Justice," p. 532.
50. Peter Bardaglio, "Rape and the Law in the Old South: 'Calculated to excite indignation in every heart'," *Journal of Southern History* 60 (November 1994): 754.
51. Hall, "'The Mind That Burns Each Body': Women, Rape and Racial Violence," in Ann Snitow, Christine Stansell, Sharon Thompson, eds., *Powers of Desire: The Politics of Sexuality*, (New York: Monthly Review Press, 1983), p. 335.
52. Affidavit of M. J. Jones, 13 November 1912, ACF 188/1633. At the pardon board meeting of 13 November 1912, Wilson's application for conditional pardon was approved following 'the recommendation of numerous responsible parties familiar with this case; upon new evidence brought before this Board which was not before the trial Court; and upon the recommendation of nine of the trial jurors, the Sheriff of Bradford County and the clearance of the Board of County Commissioners; and it appearing that the applicant's prison conduct has been especially meritorious'. Minutes A: 264.
53. Application for pardon, D. E. Knight to the Honourable Board of Pardons of the State of Florida, 8 January 1911.
54. J. N. Langford to Hon. Pardoning Board of Florida, 28 November 1911. Sheriff Langford requested that the Board grant Wilson a conditional pardon. Other recommendations were secured from C. L. Peek, Chairman of the Board of County Commissioners at Starke, who expressed serious doubts over Wilson's guilt and nine members of the jury who had convicted Wilson, but now believed Wilson was not guilty because of the 'great and many inconsistencies' in Girtrude Futch's statement to Judge Dekle and her testimony in court. See C. L. Peek to Hon Board of Pardons, 3 July 1912; Petition of nine jurors, no date, possibly submitted together with Judge Dekle's Testimony of Facts at Trial, 8 July 1911.
55. R. C. Strickland to Whom It May Concern, 5 November 1911; R. H. Brosky and Jack Moody, 'Guards of Mack Wilson', no date, no address; Chaplain M. M. Strickland to Hon. Pardon Board, 18 November 1911; Captain and guards of Bonaventure to Honourable Board of Pardons, 28 October 1912: 'This applicant is a young man of average intelligence and for the past year he has been that of a very faithful man. We believe you could do a righteous act to grant this young

man a pardon, and hope you will see fit to do so'.

56. Petition To Honourable Board of Pardons, 1912, ACF 188/1633. Three other petitions from citizens of Starke and Bradford county are located in Wilson's pardon file. One dating from 15 June 1912 and requesting a full and free pardon for Wilson contains the signatures of farmers, painters, merchants, one dental surgeon, a deputy sheriff and two barbers. Apparently unknown to Mack Wilson, now at Bonaventure, his application was passed over on 4 January 1912. See Mack Wilson #9125 to Mr. G. T. Whitfield, 19 February 1912 enquiring as to whether application came before Board at the last meeting as he had received no word from his lawyer. Wilson received a conditional pardon ten months later on 30 October 1912.

57. Minutes A: 264.

58. Skillman, vol. 4, p. 3439. This misdemeanour carried a the penalty of a twelve months imprisonment in the county jail, and/or \$1,000 fine.

59. Conley, "Rape and Justice," pp. 535-536.

60. Application for pardon, 20 November 1909, ACF 128/1853.

61. In June 1916 the Board of Pardons received notice from the State Prison Physician, R. Handley, that Willie Graham, now a state prisoner at Raiford, 'is in such bad condition physically that he has not walked a step in two years or more, and the possibilities are the he will not survive the month out'. See R. Handley to the Pardoning Board, 13 June 1916. Prior to this Hodges had emphasised Graham's exemplary prison record. For example, R. H. McDougall, captain of the convict camp at Englewood, endorsed Bill Graham as an 'excellent prisoner' whom he believed to be innocent of rape. He noted that Graham had rendered service to the state prison system when in December 1911 he learned of a plot by five convicts to escape from their cells that night through a window where 'they had the bars bent almost enough for a man to get through . . '. and alerted the yard man. See Captain R. H. McDougall to the Pardoning Board, 1 May 1913, ACF 128/1853.

62. Minor S. Jones to Wm. C. Hodges, 25 May 1914, ACF 128/1853.

63. Tong, p. 91.

64. Newspaper clipping, possibly from Jacksonville's *Times Union and Citizen*, 5 March 1895, ACF 142/161-A.

65. Judge R. H. Call to His Excellency Hon. W. D. Bloxham, 11 January 1898, ACF 142/161-A.

66. Susan Estrich, *Real Rape*, (Cambridge, Mass.: Harvard University Press, 1987), p. 31.

67. *State v. Wheeler* (1902), quoted in Estrich, p. 123n62.
68. Elizabeth Anne Mills, "One Hundred Years of Fear: Rape and the Medical Profession," in Rafter and Stanko, eds., p. 47.
69. *Ibid.*, p. 45.
70. Quoted in Mills, p. 37. In Elizabeth Anne Mills's review of forty-one medical journal articles written between 1880 and 1960, she found a general consensus among medical writers that large numbers of rape accusations brought to court rested on unfounded or false charges. The tone of the articles revealed the existence of a widely-held belief that women lacked veracity.
71. *Ibid.*, pp. 36, 39.
72. Hattie Dargan was examined by black physicians at the time of the preliminary trial, and at least two white physicians at the time of the main trial. See Judge R. H. Call to his Excellency Hon. W. D. Bloxham, 11 January 1898, ACF 127/278.
73. However, 'although popularly regarded as "absolute proof" in rape case, the presence or absence of hymenal injury was not in itself considered conclusive evidence for or against rape'. See Mills, pp. 32, 43.
74. *Ibid.*, p. 44.
75. See Affidavit of Mollie Bass [signed with an X], sworn and subscribed by Judge Thomas A. Hall, 20 November 1897, ACF 127/278.
76. Statement of Facts, pp. 2-3, ACF 127/278.
77. Affidavit of D. G. Humphries, 8 January 1898. In a direct appeal to Governor Bloxham to secure a commutation for his client, attorney W. A. Hall emphasised the medical disagreement over the causes of Hattie Dargan's injuries. Hall argued that according to R. Humphries, 'the white physician referred to', Dargan's injuries could have occurred up to nine months before the alleged rape; that R. Humphries could not swear the alleged victim did not have syphilis 'as it was possible that all the signs of the syphilis could have completely disappeared by the time of his examination, and yet she have [sic] had the syphilis at the time of the alleged rape . . .'. See W. A. Hall to Hon. W. D. Bloxham, 15 January 1898, ACF 127/278.
78. Mills, pp. 38-39.
79. Affidavit of Sam T. Fletcher, 8 August 1895, ACF 142/161-A.
80. Bardaglio, *Reconstructing the Household*, p. 73.
81. Quoted in Bardaglio, "Rape and the Law," p. 769.
82. *Rice v. State*, 35 Fla. 236, 17 So. 286 (1895); Estrich, p. 124n75.

83. Edwards, p. 244.

84. Caesar Lombroso and William Ferrero, *The Female Offender*, (London: Peter Owen, Ltd, 1959), chapter 12; R. Emerson Dobash and Russell P. Dobash, *Women, Violence and Social Change*, (London and New York: Routledge, 1992), p. 158.

85. See Affidavit of ten jurors, 8 January 1898, ACF 127/278. The jurors claim: 'had we known that our recommendation of mercy would not have been recognised by the Court and that said Golden would have been sentenced to be hanged then we would never have agreed upon a verdict of "guilty as charged"'.

86. Hattie Dargan testified that her mother sent her to fetch wood during the afternoon of 31 July 1897. When she left her mother and Golden were talking. Golden then came up behind her as she was gathering wood, put his hand over her mouth so she could not scream, and raped her. Golden denied this. He claimed that he was at the Dargan home when Hattie and a preacher called Odam went to collect roots to make medicine for her mother's headache. One suggestion put forward by the defence attorney was that Odam had intercourse with Hattie Dargan for payment of cloth he had given to Annie Dargan (who explained that Odam had given her three-four yards of cloth as payment for washing). Hattie had testified that Odam visited her on three Sunday evenings, he would often talk to her under an oak tree where the Dargan family did their cooking, and that he had given her mother cloth for her, but said he had never kissed her. Certain discrepancies in the testimony of Annie Dargan emerged under cross-examination. For example, it was Odam who had prepared herbal headache medicine on the morning of 31 July whereas Annie Dargan had previously alleged that on the day of the rape, only Golden was on her property (but reiterated that Odam had left before Golden). See "Statement of Facts testified to at the preliminary hearing," provided by Judge Thomas Hall, no date, pp. 1-2, ACF 127/278.

87. Affidavit of J. Hughes, 8 January 1898, ACF 127/278. J. Hughes, postmaster of Yulee, alleged that 'negro men' often came to his store and purchased candy for Hattie who sat on their laps.

88. W. A. Hall to Hon. W. D. Bloxham, 15 January 1898; Affidavit of Major Devane, 8 January 1898, ACF 127/278.

89. See Affidavit of John Jacobs [signed with an X], 8 January 1898, ACF 127/278. Jacobs alleged that in mid November 1897: 'I was in the company of Hattie Dargan and that she got to playing with me and put her hand into my breeches after unbuttoning the front part of my breeches and began feeling my privates, whereupon she requested me to do it to her, asking if I didn't want some, to which I replied by asking if she didn't have some kind of disease, as I had previously heard it rumoured that she had the pock, and she replied that she was well of it now, but that she had it. Then I requested that she show herself to me, whereupon she pulled up her frock and showed me her privates. I saw signs of healed up sores on her legs, but otherwise she appeared allright [sic], whereupon I proceeded to have sexual intercourse with her'. He alleged that they were disturbed by Wash Wilds who reported them to Annie Dargan, and the next day

she had demanded money from Jacobs, and he gave her one dollar and twenty-five cents as payment for intercourse with Hattie.

90. Samuel A. Swann to Governor W. D. Bloxham, 8 January 1898, ACF 127/278.

91. See Judge R. H. Call to His Excellency Hon. W. D. Bloxham, 11 January 1898, ACF 127/278. The Dargan family's disappearance from Crandall in November 1897 shortly after the trial was viewed as being innately suspicious by several affiants. See Affidavit of Robert Mercer, 8 January 1898; Affidavit of John Jacobs, 8 January 1898. The Judge acknowledged it was 'peculiar' and cited this as one of the reasons 'why it would seem proper to grant a stay, but many reasons occur to me why they should have gone other than guilt of perjury on their part'.

92. W. A. Hall to Hon. W. D. Bloxham, 15 January 1898. The affidavits from residents of Crandall and Yulee (of four months to one year), were all subscribed by Justice of the Peace, M. J. Taylor, in the presence of Golden's attorney W. A. Hall (possibly a relation of Judge Thomas A. Hall) and Sheriff W. F. Higginbotham of Nassau County. Hall's letter also emphasised the support for Golden's appeal from Nassau County citizens of good standing: 'I defended the prisoner without compensation and gave my further services in the matter for actual expenses only, which were subscribed by the leading citizens here, and not by the negroes, while Judge Hall and Sheriff Higginbotham are out time and money in Golden's interests, and now they do not feel that they are able to further expend time and money in the matter, for what they have done thus far had been purely in the interest of justice, and that a judicial murder or punishment may not be inflicted upon one whom they, and all the people of Nassau County, believe to be innocent'.

93. G. B. Sparkman to Hon. D. Lang, 7 November 1895. In a handwritten footnote at the bottom of this letter (dated 18 November 1895) sentencing judge, Barron Phillips, states that he cannot recommend a pardon for Jordan at this time.

94. See second letter, Samuel A. Swann to Hon W. D. Bloxham, 8 January 1898, ACF 127/278.

95. A. G. Hartridge to Hon. W. D. Bloxham, 26 January 1898; D. Lang to Mr. W. A. Hall, 24 January 1898, OC 3: 88. Notice of reprieve is contained in W. D. Bloxham to Mr. W. F. Higginbotham, 31 January 1898, OC 3: 91.

96. Augustus G. Hartridge to Hon. W. D. Bloxham, 2 March 1898, ACF 127/278.

97. D. Lang to Mr. W. A. Hall, 18 March 1898, OC 3: 121.

98. See Rev. L. C. Griffin to Governor Gilchrist, 28 February 1910, ACF 187/1426.

99. L. B. Wombwell to Hon. D. Lang, 27 March 1896.

100. L. B. Wombwell to D. Lang, 16 February 1897.

101. Application for pardon, August 1909, p. 1, ACF 96/1292.

102. See Copy of Indictment, 16 March 1909, ACF 96/1292.

103. Application for pardon, p. 1; Affidavit of Daniel Strong, 31 May 1909, confirmed on a scrap of paper with signatures of Hattie Adams, Clara Simmons, and Richard Simmons.

104. Application for pardon, p. 1. These arguments are reiterated in a petition from citizens of Levy county to Honourable Board of Pardons, 23 June 1909. A petition (dated June 1909) signed by nine citizens of Levyville, Levy County who gave their occupation as 'farming', mentioned that William Adams and Ella Cottrel were 'dark-skinned colored people' while the baby was 'a mulatto', the implication being that Adams could not be the father. See Petition to Hon Pardoning Board from citizens of Levy County, 23 June 1909. In his application, Adams also stated he would submit the following to accompany his application: an 'indorsement' from citizens of Levy county as to his good character and Ella Cottrel's bad character; a certificate as to the colour of Ella Cottrel's child, and of Adams's colour; and an affidavit from Daniel Strong, all of which are located in Adams's pardon file, ACF 96/1292.

105. Notarized certificate, 9 June 1909, ACF 96/1292. Michelle Brown notes that African Americans owned \$6,466,487 worth of property in Florida in 1900, reflecting the steady accumulation of black homesteaders and property owners in Florida in the last third of the nineteenth century, largely concentrated in ten counties: Jackson, Leon, Alachua, Suwannee, Marion, Madison, Washington, Hamilton, Gadsden and Columbia. Adams's property was located in the county bordering Marion, which exhibited a strong pattern of inherited and permanent property ownership. Forty acres meant that Adams was a relatively small landowner (one was allowed eighty acres under the 1866 Homestead Act), but freedmen and their descendants saved their earnings from wage labour, sharecropping, or teaching in Adams' case in order to buy the patents for a homestead. See Brown, "African-American Property Owners," pp. 45, 62, 68.

106. Freedman, pp. 198-199; D'Emilio and Freedman, *Intimate Matters*, p. 104.

107. B. N. Thompson to Wm. C. Hodges, 28 July 1909, ACF 96/1292.

108. E. A. Pinnell to Col. Wm. C. Hodges, 16 August 1909. Only one letter in Adams's pardon file unequivocally proclaims his innocence. E. A. Pinnell, a lawyer from Bronson, asserted that Adams's conviction was based on 'slight corroborating evidence' from other persons (children) on or near the corn crib where the offense allegedly took place, and expressed serious doubts as to whether Adams had fathered Cottrel's child.

109. E. Walker to G. T. Whitfield, 23 August 1909, ACF 96/1292.

110. W. Epperson to Wm. C. Hodges, 16 August 1909, ACF 96/1292.

111. A. P. Hardee to Hon. G. T. Whitfield, 17 August 1909 in response to a request from Whitfield, under instructions from the Board, who had written to request the opinions of James T. Willis, Circuit Judge, Starke; Hon. J. M. Rivers, State Attorney, Gainesville; and Hon. E. Walker, Sheriff Levy County, Bronson, on 14 August 1909. See correspondence in ACF 96/1292.

112. J. M. Rivers to Mr. G. T. Whitfield, 21 August 1909, ACF 96/1292.

113. B. V. Elmore to Hon. Pardoning Board, 27 April 1910, ACF 96/1292. Pardon Board Minutes state that he had Bright's Disease, See Minutes A: 86.

114. The numerous endorsements from captains and guards at the convict camps of Sweat & Flowers, and from Captain J. R. Hewitt of Marion Farms describe William Adams as a 'model prisoner, very obedient and respectful'. The superintendent of the Blountstown camp noted that Adams had arrived highly recommended, was a trusty and model prisoner, who had assisted in preventing an attempted escape on 7 February 1910. He also reported that Adams's physical condition had deteriorated so badly that he could no longer undertake 'real hard manual labour (such as it is necessary to do in Turpentine)'. As a result, he recommended that Adams be pardoned. See Captain J. R. Hewitt to Governor and Pardon Board, 5 July 1909; Superintendent, Sweat & Flowers to Hon. Pardoning Board, 4 April 1910, ACF 96/1292.

Adams's pardon file contains several petitions, including one from Citizens of Levy county to Hon. Pardoning Board, June 1909, signed by eight farmers and one merchant. It comments on Adams's prior good reputation in the community and agrees that he has endured sufficient punishment if he was guilty (although the signatories did not believe he was). This petition includes a signature from C. C. Cottrelle, but it is not clear if this is genuine. Two other petitions are from the captain and guards at the convict camps of Sweat & Flowers at Blountstown and Ocala where Adams laboured before being sent to the prison hospital at Ocala. See Petition from captain and guards at Sweat & Flowers camp, Blountstown to Hon. Pardoning Board, 12 March 1909; petition from captain and guards at Sweat & Flowers camp, Ocala, 15 June 1909.

115. Minutes A: 85-86.

116. Conley, *Unwritten Law*, p. 179.

117. Newspaper clipping, possibly from Jacksonville's *Times Union and Citizen*, 5 March 1895, ACF 142/161-A.

118. Affidavit of Sam T. Fletcher, 8 August 1895, ACF 142/161-A. One petition in File 161-A blames the *Times Union* for printing an inflammatory account of the alleged rape, of exciting the public mind and spurring individuals to threaten lynching. In his own letter to the pardoning board from a camp at Clark, Jordan reiterated the points made by his attorney: he denied rape, stated that he was never within 60 yards of Beatrice Stephenson, had pled guilty on the advice of his lawyer and friends in order to secure a lighter sentence, and had suffered threats from Charles Stephenson and others. He made an emotional appeal for his release

on behalf of his wife and child. See Joseph T. Jordan to the Governor and Board of Pardons, 27 October 1895.

119. Charles Stephenson to Hon. Henry L. Mitchell, 13 August 1895, ACF 142/161-A.

120. Affidavit of H. D. Sauls, 8 August 1895, ACF 142/161-A.

121. Affidavit of A. J. Stewart, 8 August 1895, ACF 142/161-A.

122. Affidavit of H. D. Sauls, 8 August 1895, ACF 142/161-A.

123. Sarah Jordan to Governor Bloxham, 6 January 1897, ACF 142/161-A.

124. J. B. Wall to Governor Bloxham, 24 October 1898, ACF 142/161-A.

125. As early as September 1895, H. P. Bailey, Tax and Timber Agent of Bowling Green, had requested that Governor Mitchell set a date for the pardoning board to consider Jordan's case. See H. P. Bailey to Hon. Henry L. Mitchell, 5 September 1895, ACF 142/161-A.

126. Synopsis of Evidence, no date, ACF 124/139.

127. *Tampa Daily News*, 6 January 1894, p. 1, newspaper cutting in ACF 124/139. Two days later, the same paper reported that this was the fifth case of criminal assaults on children in Hillsborough county in six years. Two of these offenders were currently serving prison terms, but Frasier was the only one of the other three who had committed offences within the city of Tampa to be arrested, as 'the other two were warned and fled by night to escape the penalty of their crime'. See *Tampa Daily News*, 8 January 1894, newspaper cutting in ACF 124/139.

128. *Tampa Daily News*, 10 January 1894, newspaper cutting in ACF 124/139.

129. Application for pardon, no date, possibly April 1895, ACF 124/139.

130. D. S. McKay to Hon. Board of Pardons, 15 April 1895; Handwritten note on back of affidavit from D. S. McKay, 28 May 1895, ACF 124/139.

131. Affidavit of D. S. McKay, 27 May 1895, ACF 124/139.

132. Tampa shoemaker John Southwood also wrote in support of Frasier, stating that he was incapable of committing the crime, and though Frasier was very fond of children in a grandfatherly way, he had never seen him commit any impropriety or take any liberties with children in the neighbourhood. See John Southwood to Hon. Board of Pardons, 12 April 1895, ACF 124/139.

133. FTU 7 December 1897, p. 5. Clawson suggests that non-Masonic orders such as the Improved Order of Red Men were more receptive to working-class participation. See Mary Ann Clawson, *Constructing Brotherhood: Class, Gender, and Fraternalism*, (Princeton, N.J.: Princeton University Press, 1989), pp. 97, 104.

134. FTU 10 October 1897, p. 6.
135. *Sunday Times Union and Citizen*, 10 October 1897, p. 6.
136. *Sunday Times Union and Citizen*, 28 November 1897, p. 6.
137. There is however a conditional pardon decree of the same date made out to a George C. Barker. See PADR 2: 419.
138. TMT 9 October 1913, p. 5.
139. TMT 8 October 1913, p. 4.
140. TMT 9 October 1913, p. 5.
141. R. L. J. Bird and R. D. K. Wainwright to State Board of Pardons, 9 March 1916. There is a similar letter from H.W. Walker, Ph.D., J. B. Harrell, Ed Luber, E. Van Hood, M.D., E. G. Luidien, M.D., J. Harry Walters, M.D., [The Court Pharmacy of Ocala] to Members of the Pardoning Board, 12 November 1915, ACF 137/2240.
142. Captain H. L. Green to the Honourable Board of Pardons, 3 March 1916, ACF 137/2240.
143. Guil M. Howsley to Hon. Park Trammell, 22 June 1916, ACF 137/2240.
144. See Conley, "Rape and Justice," p. 529.
145. Prisoner Punishment Records, CLP Box 2/ Folder 1, pp. 53-56.
146. W. David to Governor Trammell, 28 November 1914, ACF 137/2240. David noted that a man recently tried in Waco for a similar offense had received a sentence of forty-nine years imprisonment 'which was none too many for a crime so heinous'.
147. House Journal, 1911, p. 109.
148. Captain H. L. Green to the Honourable Board of Pardons, 3 March 1916, ACF 137/2240.
149. Hester Lawrence testified that she and Ella Tillman met Richardson at the Magnolia Hotel, 'just out by the fence at the Golf course'. Richardson had called to them saying he had a message, and she went to him while Ella ran away. Richardson grabbed her hand, dragged her to a bridge and 'crossed over to the old grade in the International railroad and he throwed me down and tore off my drawers and hurt me'. He raped her once as she could not get away from him, then 'a man came along with an axe' and Richardson released her. As she ran off, he caught her and raped her again. State's witness Lemuel Flowers testified that Louis Simmons called his attention to a man 'having a girl' next to the railroad. They fetched Bramo Lagatchi who was armed. As they crossed to the railroad

yard, Richardson was getting up on his knees and Hester Lawrence was 'running up the embankment'. Flowers also stated that the buttons on Richardson's trousers were undone and that Hester Lawrence was crying. The medical testimony of R. William Griffiths was crucial to this conviction. Griffiths reported that he had examined Hester Lawrence the day after the alleged assault, 'and found that she had been entered and that some one had had carnal connection with her. The parts were bruised and inflamed and there were contusions. There was also something on her that looked like semen [sic], although I could not tell positively, as I made no examination. The parts were very sore when I examined her'. See Statement of Testimony at Trial, submitted by Judge R. M. Call, A. G. Hartridge, and L. E. Wade, no date, pp. 1-3, ACF 168/543. In spite of the efforts of his attorney, L. E. Wade, Richardson was sentenced to death during the Spring term of the Circuit Court of Clay County in April 1902.

150. Julia L. Lawrence to "My dear kind Sister," 20 May 1902, ACF 168/543.

151. Butler Hall to Hon Board of Pardons, no date, ACF 130/298.

152. E. B. Calhoun to Board of Pardons, 29 December 1898; H. Franklin to Board of Pardons (written by E. B. Calhoun of Marianna), 29 December 1898; Ida Pollock to Board of Pardons (witnessed by E. B. Calhoun), 29 December 1898, ACF 130/298.

153. E. B. Calhoun to Board of Pardons, 29 December 1898, ACF 130/298.

154. J. M. Murphy to Honourable Board of Pardons, 19 December 1917.

155. George P. Raney to the State Board of Pardons, 1 November 1915. The official documentation states that Gadsden was convicted of assault to rape a negress, but State Attorney, George P. Raney describes the victim, eight-year old Georgia Murphy, as being white.

156. Edwards, p. 238.

157. Ibid., pp. 237-238.

158. Conley, *Unwritten Law*, pp. 188, 203.

CHAPTER 5

GENDER, HOMICIDE AND DOMESTICITY

Murders have become so frequent in this County that lovers of the peace and justice are alarmed, and insist that steps be taken to prevent the wholesale slaughter of human beings by others. The failure of juries to convict murderers when a clear case is made out against them, and the utter inability of overseers in the penitentiaries to keep them incarcerated after conviction, has caused a great deal of talk in this city recently.¹

Applications for pardon underline that the character and appropriate behaviour of women and men as either victims or perpetrators of murder, manslaughter and assault to murder were important, as was the method of death. Standards of acceptable behaviour and respectability were, of course, gendered as well as measured by race and class, and functioned to gauge the 'criminality' of an act of murder; whether female killers and victims, for example, were devoted wives driven to act, and thus deserving of clemency, or evil adulteresses and temptresses who contributed to their own deaths. Nineteen-year old Joe Walton had his death sentence commuted to life imprisonment at hard labour in June 1907, partly because of his age. At the same time, his lover and victim, Lizzie Johnson, was described as 'one of the most notorious characters of La Villa' and a woman of 'very bad character', who had previously been arrested for fighting

and disorderly conduct, and 'had recently been convicted of a murderous assault on her husband'.² However, attempts to use the character of the murdered wife to secure leniency from male jurors did not always succeed. In requesting a new trial for his client Napoleon White, convicted in Fall 1889 of murdering his wife with a piece of metal gas pipe, attorney George K. Walker complained that the judge, David S. Walker, had prejudiced the minds of jury members with the statement: 'I will not allow a man who has killed his wife to bring the character of his wife in question'.³ The fact that Martha Ann White was white may have been a contributory factor towards the statement and ensured that the execution of Napoleon White took place (before a crowd of 1500 'mostly colored' spectators) in Tallahassee on 23 September 1890. Further, this was described as White's second conviction for murder; he had only recently been released from prison after serving time for 'the murder of a little negro boy'.⁴

This chapter examines the gendered treatment of murder and murderers in Florida during the period 1889-1918 with particular emphasis on female killers and spousal murder. Wilbanks' study of homicide in Dade County in the 1970s demonstrated that husbands who killed their wives were given much more severe sentences than wives who killed their husbands; this has historical precedent in Florida.⁵ Driggs compiled information on 202 legal executions for Florida in the period 1878-1920, and on the basis of this data, where the victim is identified, spousal murder accounts for twenty two of the 183 executions of male offenders convicted of murder. Wives who killed their husbands were not sentenced to death, partly because Florida after the Civil War was not in the habit of executing women. It was common practice for women who were found guilty of first degree

or capital murder to be recommended to the mercy of the court, enabling the judge to impose a sentence of life imprisonment. In some cases a charge or plea of manslaughter was accepted. Florida juries seem to have been genuinely repulsed by the spectre of an executed women; no woman was executed in Florida after 1848.⁶ Were they putting justice behind chivalry? Did they see their duty as correcting the weaker sex but not depriving them of life? The notion that women escaped hanging because they were women was reinforced by these customs. If a jury sanctioned the execution of women, it would be tantamount to a declaration of gender equality that would necessitate the extension of civil and political rights to the weaker sex. The recommendation to mercy reinforced women's inferiority - these women were tried by a jury of men thus automatically deprived of the right to trial by a jury of their peers. At the same time, the absence of women from the gallows was considered a measure of the civilised character of Florida society⁷ In contrast, wife-killing was one crime for which juries exhibited little tolerance; this suggests that public opinion endorsed different standards of legal or criminal responsibility according to gender. This chapter explores the decisions taken to execute or commute the sentences of those convicted of murder, manslaughter and assault to murder in Florida in the late nineteenth and early twentieth centuries, the form, language, and rhetorical construction of pardon applications for these offences, and the contexts of both the pardoning policy and the original violence.

While offenders serving terms of three to five years for breaking and entering, larceny and grand larceny passed through the penal system, over the years there emerged a distinct and growing core of life-term and long-term prisoners convicted of murder, rape and other violent offences. This was a natural

and inevitable development given that between 1889 and 1914 murder, for example, accounted for 1042 committals and assault to murder accounted for 1156 committals.

Florida's statutes covering 'Offenses against the Person', dating from 1868, categorised homicide as 'either justifiable or excusable homicide, or murder or manslaughter, according to the facts and circumstances of each case'.⁸ Murder was divided into three separate degrees of severity, each of which carried specific legal sanctions. First degree murder was defined as 'the unlawful killing of a human being, when perpetrated from a premeditated design to effect the death of the person killed' or an unlawful killing which occurred during 'any arson, rape, robbery or burglary', and was punishable by death by hanging. In capital cases, a jury could recommend mercy by majority vote, and the judge reduced the sentence to life imprisonment. Second degree murder was defined as being 'perpetrated by any act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of a particular individual', and was punishable by life imprisonment at hard labour. Third degree murder was 'perpetrated without any design to effect death, by a person engaged in the commission of any felony, other than arson, rape, robbery or burglary', and was punishable by a term of imprisonment at hard labour that was not to exceed twenty years.⁹ Manslaughter, which was 'not a degree of murder, but a grade of unlawful homicide' from which premeditation was absent, and was punishable by a prison term of up to twenty years, or imprisonment in the county jail for a maximum term of one year, or by a fine of up to five thousand dollars. An offence could be reduced from murder to

manslaughter if the accused killed his wife's paramour as this was deemed to be 'legal provocation'.¹⁰

Domestic violence

Homicide cases involving women in Florida as either victims or perpetrators reveal a high incidence of domestic abuse. Robert Outley, a turpentine chipper, was executed in September 1903 in Clay County, for killing his wife Barbara with an axe. Walter Hines testified: 'She had run away two or three times. He told me that he was going after her, and said if he found her he would fix her so she wouldn't run away any more'.¹¹ For the abused wife or the dissatisfied husband in turn-of-the-century Florida, murder and/or violent assault could be instinctive responses to marital problems. Elizabeth Pleck observes: 'Women who slay their mates have often been beaten by their husbands over a period of years before they finally reached breaking point. Some wives are simply defending themselves from attack, others intentionally plan murder. Husbands who murder their wives, on the other hand, are usually following their previous patterns, only escalating its level'.¹²

The nineteenth century witnessed a shift in attitudes toward wife-beating and wife-killing, illustrated by the passage of several state laws that made wife-beating a misdemeanour.¹³ According to Pleck, wife-beating was illegal in most American states by 1870 and regarded as inappropriate by many nineteenth-century Americans, but as Maeve Doggett observes, the difference between judicial or popular disavowal of the husband's right to chastise his wife and a wife's right not to be beaten remained.¹⁴ Florida does not appear to have passed such a law -

such offences continued to appear as assault and battery or assault to murder - yet the existence of domestic violence seems to have been acknowledged by the State authorities. Nevertheless, there was a reluctance to intervene in familial affairs partly because of community norms and partly because of the problem of determining when reasonable chastisement became excessive violence. The hierarchical structure of marriage meant that wives were to obey husbands, and husbands were to correct and govern their wives. The concept that a wife might need protection from her husband was difficult for socially conservative men to act upon; that the structure of the institution of marriage might lead to homicide was difficult for them to contemplate.

Many women successfully coped with abuse by verbally or physically defending themselves, a few fought back and some sought outside assistance, while others left the offending husband or lover. Others took their abusers to court. Hattie Jordan had her husband Preston arrested for the third time for 'fighting and using profane language' in November 1900. He justified his use of physical violence towards her on the grounds that she was excessively jealous and had been 'spying' on him, but 'Jordan failed to impress his innocence on the Judge and was fined \$5'.¹⁵ There was a tendency to look often for provocation or justification of assault in the woman's own behaviour, so domestic violence was rationalised as a necessary effort to calm a hysterical or violent woman rather than a symptom of problems in the marital relationship:

Because it seemed to the judge that the wife's language was also aggravating in the extreme, Judge Bailey let W. B. Futch [a carpenter] in police court yesterday down with a ten dollar fine on a charge of beating Mrs. Futch. The judge, after telling Futch that in view of such a 'terrible disruption of domestic relations', the court could not conscientiously fine him more than ten dollars.¹⁶

At the same time, because class and race were decisive factors in determining who was arrested, prosecuted and convicted, and were 'structured into formal and operational definitions of crime, administrative discretion, criteria for probation, and so on',¹⁷ it was usual for wife-beating to be considered another normal feature of lower-class violence, along with drunkenness, brawling, fist-fighting and general lack of self-control. This was particularly true if the context for an act of domestic violence was a turpentine or phosphate settlement, centres of 'dangerous', criminal and unruly activities. The police and the criminal justice personnel appear to have intervened in cases of domestic abuse only when an assault was reported or when a homicide resulted. Divorce was an option for the abused wife in turn-of-the-century Florida but one many women could neither countenance nor afford, as a woman who attempted to leave an abusive relationship faced the enormous difficulties of being on her own.¹⁸ While husbands gradually lost their legal right of chastisement in the nineteenth century, wives were still bound by economic dependence.

Wife-killers

Robert Henry assaulted his wife with an axe in the early morning of 25 February 1896. Mary Henry was later discovered by her father John Smiley lying on a 'cheap' bed in a blood-stained nightgown with blood and brain matter 'oozing' from the left side of her head. It was optimistically surmised in the *Times Union* that the operation of trephining (the drilling of holes in the skull to relieve the brain of pressure from a build-up of fluid) would facilitate a partial recovery: 'medical skill and the wonderful vitality of Mary Henry may save

Robert Henry from being a murderer in deed, though not in heart'. Mary Henry was to be known as the 'woman with the curtailed conscience' as she would have 'one-third less of that portion of her brain supposed to be the seat of higher mental faculties, than is assigned to mortals of her calibre'.¹⁹ However, her injuries proved fatal on 1 March 1896.²⁰ The attending physician later testified that she had died as a result of an axe wound (three inches wide and over one inch deep on the left side of her head) which caused the brain to haemorrhage; he expressed surprise that she had not died instantly.²¹

Henry was convicted on the evidence of his brother-in-law and lodger Robert Smiley who testified to hearing the Henrys quarrelling as he fell asleep, and was awakened by Henry assaulting him with the axe whereupon he fled to his parent's house a mile away.²² Several neighbours had heard a woman scream in the early hours but none had investigated. Prince Johnson who had stayed up to guard his chickens from possible thieves was cross-examined by Henry's attorney, Thomas Ledwith:

Q. Did you make any attempt to find out what caused those screams that night?

A. No, sir.

Q. Why not?

A. Because it is such a common occurrence - have fusses and fights over there all the time.

Q. Then I understand you to say that disturbances of that kind are very common in that settlement?

A. Yes, sir.

Q. How do you know that those screams came from Robert Henry's house?

A. Because his house is direct from the corner of my porch, and the screams came right from there.²³

Female activities outside the home or leisure pursuits emerged as the source of a struggle over the parameters of wifely obedience. Henry maintained that during

a quarrel - over Mary's staying out so late and being 'disrespectful' towards him (he also insisted she hit him with a chair) - involving all three, Smiley had struck his sister with the axe as he aimed for Henry.²⁴ As this argument apparently began as soon as Mary Henry entered the house, it is difficult to understand how she came to be wearing her nightgown. A juror then asked what the axe was doing in the house, to which Henry replied he did not know.²⁵ Henry's actions in fleeing the scene of the assault did not help his case and the jury's verdict of guilty of first degree murder was readily expected: 'T. A. Ledwith, his attorney, handled his case well, but the evidence was all against him'.²⁶

However, Ledwith sought to use the ambiguous wording of the jury's verdict to argue for the death sentence to be set aside and for a new trial: 'We find the defendant guilty of murder in the first degree recommended to the mercy of the court by one'.²⁷ It was not clear whether one juror or seven had recommended mercy. The Supreme Court concluded:

The Circuit Judge evidently construed the verdict to be an unanimous finding of murder in the first degree with a recommendation of mercy by one of the jury, and this we think is its true meaning. Under the second section of the statute quoted [Section 2924 of the Revised Statutes] the added recommendation of mercy of less than a majority of the jury will not qualify a verdict of conviction in capital cases, or change the penalty of the law attaching to such a conviction. There was no error in our judgement, in the action of the trial court in accepting the verdict as one of murder in the first degree without any qualification'.²⁸

Following the Supreme Court's decision, the death warrant was issued in early August 1896 and Enoch Doyle and Robert Henry were originally to be executed together (but Doyle was granted a reprieve until 14 September). Henry continued to proclaim his innocence and Smiley's guilt to the end but the Board of Pardons

chose not to commute the sentence and 'wife-killer' Robert Henry was executed on 3 September 1897. On the eve of his execution, Henry was visited by Father Kenny, Father Barry, Sister Mary Ann and Sister Mary Stanislaus. When it was time for him to walk to the gallows, 'Good old Sister Mary Ann, the comforter of the distressed and the ministering angel to all those who have come beneath the gallows' shadow, enjoined him to have courage. "Be brave," she said, "and forgive all your enemies." And gave him a white handkerchief as a parting gift'.²⁹ It was reported that, '[n]o gamer man ever walked upon a scaffold that Robert Henry . . . He was cool and strong until the last, and not a tremor shook his frame in those trying ordeals of adjusting the noose and black cap, all of which was done quickly by Sheriff Broward'. Henry took sixteen minutes to be strangled to death in Duval County jail yard after plummeting through the trap door at 10.40 a.m. After Dr. Stollenwerck pronounced him dead, a telegram arrived, but a relieved Sheriff Broward announced to the pensive crowd that it had been delivered to the wrong sheriff.³⁰ Henry's actions occurred during the heat of a quarrel and so the degree of premeditation could have been contested. This was not the case for Derry Taft.

State prison officials could be particularly contemptuous when referring to African American male offenders who had enjoyed community status on the basis of their education and professional occupation prior to incarceration. These men were viewed, particularly in the late nineteenth century, as the products of the teachings of 'carpetbaggers' and 'scalawags' during Reconstruction, and as indicative of the shortcomings of the 'new negro' of the early twentieth century, both of whom, in the eyes of white Southerners, failed to exhibit any kind of deference to white superiors.³¹ In his address to the American Prison Association

in 1905 entitled 'The Negro Criminal in the Open Air', Dr. Blicht remarked: 'To illustrate the fact that the educated negro is no better than his species of ignorance, I will point out that the Florida prison camps contain no less than 75 per cent. of educated negroes, as far as the term goes, 15 per cent. of whom have at some time been ministers of the Gospel and school teachers'.³² While Blicht's characterisation is a gross exaggeration, African American convicts who had been employed in positions of trust and community standing (like similar white convicts) did end up in the State Prison System. One such convict was Derry Taft.

Taft was hanged in Tampa on 18 October 1910 for the murder of his wife Bertha. His plea of guilty to first degree murder and for mercy had been accepted by Judge Wall, but the first trial and proved to be a mistrial. The second trial before Judge Bullock (who stepped in to complete the 1910 Spring term of the Sixth Judicial Circuit following Judge Wall's illness) concluded with a sentence of death being passed on Taft on 25 July 1910, after which the date of execution was set for 2 September.³³ Three weeks later Judge Bullock wrote to Governor Gilchrist that he had found himself 'in an awkward position'. As Wall had accepted the guilty plea, Bullock 'did not feel at liberty to set it aside', especially as Taft's explanation of events had fully justified such a plea: 'After hearing this evidence I passed sentence, though I never permit a man to plead guilty to murder in the first degree, but submit it to a jury to pass on the degree, but I do not say that it is wrong'.³⁴

During August 1910 Taft's attorney Robert McNamee petitioned the Governor for 'a reprieve of a reasonable period' in order to organise the necessary

documentation for an application for commutation that was subject to delay because of the Hillsborough County Clerk's inability to summarise quickly the trial testimony. Several petitions were forwarded to the Board: 'The local sentiment in Plant City, that of the best people, is being expressed in a petition to commute the sentence of hanging to life imprisonment'.³⁵ Taft also received strong support from Sheriff Jackson:

Derry Taft for the past seven years has lived in Bartow and Plant City and has been considered a negro of exceptionally high moral standing by the white people and a highly respected leader of the negroes, although a preacher has the reputation of being very industrious, of high standing in their lodges particularly masonry . . . That he had endeavoured by preaching and example to elevate the negroes morally and the women particularly as to chastity.³⁶

However, Taft's character had been sorely tested when he caught his wife in an act of adultery. Taft had discussed his domestic problems with S. P. Stewart and Anna Joiner or Joyner, and his initial plans to leave Plant City. Stewart and Joiner persuaded him to remain and the three devised a plan to kill Bertha. Around 2 a.m. on 15 January 1909 Taft restrained his wife as Stewart rendered an axe blow to Bertha's head and cut her throat; they then buried her under a tree stump in Taft's yard while Joiner cleaned the blood from the bedroom floor.³⁷

Community suspicions were raised over the weekend when Taft's four year old son was seen with Joiner who was wearing one of Bertha's coats and keeping house for Derry. On Monday Taft (and a trunk containing some of Bertha's bloody clothes which had been divided between the three conspirators) journeyed by train to Lakeland where he 'told the members of some secret orders there that he had killed a white man and they secreted him for several days, raised some money for him to get away, thinking he had killed a white person'.³⁸ A week

later Joiner confessed to the details of Bertha's death and whereabouts to a visiting preacher who alerted the town marshal and Bertha's body was exhumed. Taft was turned in by the Lakeland fraternal members when the true identity of his victim was discovered. Immediately after arrest Taft made a full confession implicating Joiner and Stewart. Stewart denied involvement in the conspiracy to murder Bertha Taft and was able to produce several witnesses who claimed to have seen him on the street at the time of the murder.³⁹

State Attorney Herbert Phillips reported that at the first trial Taft had implicated Joiner as an accessory to the murder of his wife and she had admitted writing love letters to him, signing one as 'Mrs Taft'. In a later ten-page letter to the Governor Joiner exhorted him to 'fergive Derry E. Taft and let him go free because is a chile of God he confess to me while in jail that he truly loves me . . . after his wife had fersaken him an did him so then he would try to get me for his wife as he fond out that she had let her cousen and others take his place in his home'.⁴⁰ The jury at the second trial acquitted both Joiner and Stewart, leading Phillips to a bitter denunciation of the conduct of juries:

How a Jury manages, in view of the evidence in the case, to turn Steward [sic] and Joiner loose would be beyond my comprehension if I did not know that jurors so often disregard their oath . . . I honestly believe that the same jury would have turned Taft loose if he had been on trial and claimed that he was insane from jealousy when he killed his wife.⁴¹

That Taft had confessed to the crime and his accomplices had escaped punishment was enough to persuade eighty-nine Plant City petitioners (including prominent attorney Stephen Sparkman and Mayor G. B. Wells) and the Hillsborough County jailers that his sentence should be commuted to life imprisonment, that the pardon board should, in effect, intervene to rectify an injustice perpetrated by misguided

jury members.

Taft received a thirty-day reprieve but opposition to any commutation increased thereafter. In an editorial the *Tampa Morning Tribune* announced that it failed to see why Taft should be shown mercy, regardless of whether his accomplices had escaped conviction, and admitted:

Few murderers are caught in Hillsborough County and few of those caught are convicted. Of the large list of murderers in this county in the past few years, Taft is the only one to receive a sentence of death. The law against homicide is reduced to a nullity as it is; and this unfortunate condition is made more serious when a confessed murderer, one who went about his horrible business with a cruel deliberation, is permitted to escape the just penalty of his crime.⁴²

It cautioned the pardon board to make a thorough investigation before passing final judgement on Taft's case. This sentiment was reinforced by another Plant City resident who asked Governor Gilchrist:

Perhaps you would like to hear some thing from outside P[lant]. C[ity]. concerning the negro Taft. A counter petition could be gathered up to hang the nigger easily. I think outside of P. C. - all want him hung. I think any man black or white that would go into a compact to murder his wife ought to die -makes no difference if these other niggers went free . . . If a life sentence of a man meant a life sentence it would alter the case - but it does not, for instance look at Broward's and his board's record - a shame and disgrace to any state? I do not mean that Taft would be turned loose during your administration - for you have a record that is o.k.⁴³

While Taft was granted a reprieve and the Board of Pardons did investigate the possibility of commuting his sentence to life imprisonment, the final determination was that Taft should receive the sentence originally passed.⁴⁴ Ultimately the evidence of premeditation, the conspiracy to murder Bertha, the need for public punishment to demonstrate due process and Taft's profession and social standing ensured this conclusion.

As in sexual violence offences, gender, race and class interacted with the

type of offence and the offender-victim relationship to determine both the severity of the sentence and the likelihood of capital punishment being carried out. Any discourse on premeditation or on 'acceptable' behaviour and the degree to which a person's reaction was believable was premised on considerations of the backgrounds and characters of offender and victim. Sheriff Jackson argued:

As to my opinion, as to clemency is - that owing to [Taft's] intelligence, reputation, self-respect, far above the average morally, that a plea of insanity might be considered on account of catching his wife in the act of adultery, which some has considered justification under the "unwritten law" - the only motive for the crime.⁴⁵

The *Tampa Morning Tribune* disagreed: 'Taft is a negro of unusual intelligence, who has had the advantage of education, which makes his revolting crime all the more inexcusable'. Robert Henry's actions were interpreted as an unpredictable eruption of angry violence against an innocent party. In Taft's case the homicide resulted from the discovery of an unexpected situation in which a 'good man' responded with angry and or legitimate defence, for which in other circumstances he could make amends and be considered a likely candidate for pardon. If Taft had killed his wife in the arms of her paramour, would the outcome have been different?

Nineteenth-century American juries accepted an 'unwritten law' that readily forgave white males who avenged sexual dishonour in cases that usually involved husbands, brothers, or fathers who killed the men who had violated the honour of their wives, sisters or daughters. Juries tended to be less favourable to extending the same privileges to black men and women. As African Americans, like women and children, did not possess honour, how could they defend it? Further, whereas it might be possible to excuse a white male defendant for such

a killing, giving a black male the same claim to honour was inconceivable.⁴⁶ Yet, because Taft killed his wife and not his wife's lover, and in light of the comments about his 'unusual intelligence' and 'education', this suggests that the same or similar standards were being applied to him as to a white man. This may provide further evidence that by the second decade of the twentieth century, the 'unwritten law' was becoming obsolete.

In contrast, African American and lower class white migrants and plain folk remained insulated from forces of industrialised society that tempered honour in the late nineteenth and early twentieth centuries, so honour may have survived in a more violent form, fuelled by a context of poverty and degradation. Such marginality and isolation fostered a subculture where violent and aggressive behaviour was a crucial component of the gambling and drinking life of the turpentine camp or the small town on the edge of a phosphate or lumber development. Dunnellon, one of several communities that sprang up around newly developed railway lines in the 1880s, contained one of the world's richest high-grade phosphate rock deposits in the world. 'Thousands of would-be prospectors surged into Florida, and the state went through a boom period similar to the California gold rush of 1849, although on a much smaller scale'.⁴⁷ Marion County was soon thronging with prospectors and adventurers, few of whom were experienced miners. Blakey observes:

Dunnellon in 1890 had all the attributes of a pioneer gold-mining town. Dance-hall girls, gamblers, and outlaws came from as far away as California and Mexico to get their hands on some of the easy money. Saloons and brothels multiplied and catered to a rowdy clientele. 'Phosphate cocktails' and 'Duke of Dunnellon' champagne flowed freely. On Monday mornings when the culprits of the previous Saturday night and Sunday festivities were brought before him, the justice of the peace faced a full docket.⁴⁸

As the centre of the 'phosphate fever' sweeping the State and because of the dominance of the hard-rock district in the early years, it is not coincidental that Dunnellon became the headquarters camp for the convict lease system, and the two largest producers of hard rock, the Dunnellon and J. Buttgenbach Companies were major leasees of state convicts.⁴⁹ As with turpentine settlements, 'most camps are so deep in the woods that law officers don't bother with 'em much. Outside of murder, the officers usually leave it up to the camp foreman to make and enforce his own laws'.⁵⁰

In pardon applications for defendants convicted of homicides that occurred during heated quarrels in which honour demanded redress for personal slight, the grounds for clemency were selected to appeal to Board members' sense of honour and grievance but, at the same time, anger had to be constructed in an innovative and acceptable manner or context. Ayers notes: 'Accounts of Southern black violence have a familiar ring about them, for they sound much like honor-related violence among whites', and suggests that lack of faith in the courts may have fuelled blacks' use of violent means to resolve personal differences as the law was an outside force equated with white oppressors.⁵¹ Offences involving male violence, particularly black male violence, varied with regional location, but demonstrated similarities in social context: the turpentine settlement, gambling den, saloon or 'jook joint', or public street, and revolved around recurring themes and assumptions, social types and their behaviour. Smouldering grievances, accusations of adultery and infidelity, cheating, dishonesty or theft, and affronts to personal honour elicited emotions of anger, shame, humiliation, and fear of dishonour that culminated in violent action. This brought acknowledgement from

State attorneys, judges, pardon board members and the public that it was pardonable for individuals to get angry when offended by certain situations. While criminal justice personnel and the public were eager or willing to believe that black men were naturally violent and threatening, they were also willing to give them the benefit of the doubt only when the people they attacked were from the same racial and social strata. A homicide occurring during a 'negro festival' embodied a whole set of cultural images and stereotypes that allowed an attorney to place an act of violence in a context which made it understandable, even 'natural', to pardon board members. Some applications involve narrative constructions of events that refer to ongoing or recent personal quarrels or feuds. Taken together, these constructions could undermine certainty of belief in conviction where premeditated murder was at the centre.

There was no single rubric for homicide, already divided into degrees of severity, and between justifiable and unjustifiable homicide. Pardon applications invited the Governor and other Board members to demarcate further the differences between understandable and inexcusable action within and across these degrees. Labourer Jim Johnson killed Aaron Rogers with a shotgun on 9 April 1914 and plead guilty to manslaughter. In 1916 he applied for pardon from his sentence of three years. Rogers had been conducting 'improper relations' with Johnson's wife, and during a subsequent argument between Johnson and Rogers, 'the defendant did unnecessarily shoot him as far as technical self defense is defined, but under the most provoking circumstances and continued abuse by deceased of defendant's family relations', circumstances that in the opinion of Judge Bullock warranted a pardon.⁵² In discussing domestic violence, Elizabeth

Pleck notes that abusive male defendants were 'largely deterred, punished, and judged by males acting in the name of the community, who have set the standards for proper behaviour and determined the kinds of sanctions to be used'. The criminal justice system was run by men 'whose standards of justice are embedded in notions about proper definitions of manhood and womanhood and concepts of moral purity. Men, acting for the community, whether they be judges, churchmen, or vigilantes, have reserved the right to regulate the behaviour of other men'.⁵³ As with sexual violence cases, the character of the female victim could be used as a mitigating factor to explain the actions in the original offence and as a ground for pardon in a subsequent clemency application. The idea that a female victim who was not considered 'respectable' was in some way deserving of death reflected the South's chivalric code and the continued equation of female sexual purity/marital fidelity with male honour, and, conversely, of female sexual misconduct with male dishonour, notions that were not exclusive to Southern society.⁵⁴

Female killers

The rarest type of victim-offender relationship involved female offenders who killed female victims of another race.⁵⁵ Belle Skinner and Albert Willis were indicted for the murder of Ada Wells on 27 November 1902. What was unusual about this event was that Skinner and Willis were white defendants, accused of 'choking' a black woman.⁵⁶ At the 1902 Fall term of Brevard County court, Skinner was convicted of murder and sentenced to life imprisonment while Willis received a twenty year prison sentence for manslaughter. Skinner's

application for pardon, filed in July 1905, focused on her deteriorating physical condition as well as the unusual nature of the offence:

she is sixty years of age and in bad health and too weak to do any work of any value in the prison, that she cannot live long at best, that her health is very bad, that while she was so convicted she is not guilty of the crime of which she was convicted . . . as she could have had no motive in having a colored woman Ada killed, that at the trial of her case she had no money to employ any attorney and counsel was appointed for her defense by the Judge at her trial . . . She therefore prays that this Honourable Board will take mercy upon her in the illness and age and inspect the evidence against her ⁵⁷

Ada Wells and Belle Skinner, both described as prostitutes, occupied neighbouring premises in Titusville, while Albert Willis was one of Belle Skinner's customers. M. E. English heard both women complain to their landlord, Captain E. H. Rice, about each other on several occasions, and a week before the killing Skinner had threatened to burn Ada Wells's house if Rice did not remove 'that nigger'. This was confirmed by Rice and other witnesses who said Belle Skinner appeared angry and jealous of Ada Wells. Belle Skinner denied having anything to do with the killing of Ada Wells, and claimed to have seen Albert Willis and Luly Smith going toward Ada Wells's house around 11 p.m. on the night of the killing. She was awakened later by screams from the neighbouring house, but her husband refused to investigate what he considered to be 'just a drunken negro row'. Her statement was corroborated by her husband William Skinner.⁵⁸

Skinner's application received support from W. S. Norwood, Supervisor of Registration for Brevard County, who informed Governor Broward that he had been:

requested by a number of our best citizens to write to you in the interest of one Bell Skinner who is now a convict in one of the camps near this place. They all feel and so do I, that she ought to

be pardoned. I was on the Coroners Jury in her case, and have never believed her guilty of the crime as charged. There is scarcely a man in this County who knows anything about that affair who does not believe that the man Smith, who turned States [sic] evidence in the case, was the guilty party . . . she is old now and we believe harmless, and we think in her case the demands of justice have been satisfied for any part she may have taken in the killing of the worthless old negro. She, the negro, was a perfect nuisance, as bad as they get. We thus address you believing it just and right, and in the interest of humanity, that she be pardoned. She, Belle Skinner, we think, has been punished enough.⁵⁹

Prostitutes and their customers, most of whom appear to have been lower rather than middle class men, constituted one readily identifiable class of local disreputable person, whose behaviour was synonymous with bad language, drunkenness, profanity and drug-taking. Cities such as Pensacola and Jacksonville had attempted to segregate prostitutes into unofficially sanctioned red-light districts, such as La Villa in Jacksonville after 1887.⁶⁰ Justice of the Peace B. R. Wilson also testified that he had seen Ada Wells drunk several times and that she used laudanum. At the Board meeting of 6 July 1911, Belle Skinner was granted a conditional pardon because of her sterling prison record, in response to the recommendations of a 'considerable number of foremost citizens of Brevard Co', and because this was 'an elderly white woman whose prison service has been a severe lesson to her, and that her husband is anxious to have her back at home; and it appearing that she has been severely punished, even if guilty'.⁶¹

White female convicts were rarely found in Florida's State Prison System. Over ninety-five percent of women committed to the State Prison System in the period 1889-1918 were African American, and they were arrested, convicted and sentenced in increasing numbers during the first two decades of the twentieth century. African American women were consistently over-represented; social and

judicial prejudice meant that black women did not benefit from any sense of 'chivalry' that may have been extended by juries to white women. In contrast to popular opinion, women did not routinely get away with murder or manslaughter because of a chivalric ideal; they were arrested, prosecuted, convicted and sentenced for their actions.⁶² The striking racial imbalance in post-Civil War southern prisons had much to do with 'overt racism and covert discrimination' but at the same time, as several scholars have noted, the disproportionate numbers of black women and men in prisons of the past seem also to have been a function of higher black rates of offending.⁶³ Moreover, women, particularly nonwhite women, were much more likely to become homicide victims, and women in their twenties seemed the most vulnerable.⁶⁴ In the majority of cases women were killed by men, women killing other women being more unusual but not exceptional. Further, murders involving women, whether black or white, victims or offenders, were usually intra-racial and often domestic events, involving other family members in or near the home. Women of both races killed their husbands, lovers, children and husband's paramours. Female crimes were infrequently committed in the workplace or in gambling or saloon settings, reflecting women's relative exclusion from these places.

The crime of infanticide was, of course, viewed as a quintessential female crime, with its roots in older notions of the licentiousness and immorality of black women, but one which evoked sympathy from Board members, judges and prison personnel, who seem to have demonstrated increased sensitivity to the social and economic pressures on vulnerable young unwed mothers of illegitimate children. Was this perhaps an indication of the growing importance of 'male domestic

responsibility', an early twentieth-century redefinition of manliness affecting middle-class suburban men in companionable marriages and with sufficient job security to spend time with their families,⁶⁵ or an illustration of a 'civilising process' occurring in turn-of-the century Florida? At the same time, women convicted of infanticide, an offence equated with human weakness, did not represent the same threat to public safety as other types of offender. Many African American and poor white women, and especially those who had recently migrated from neighbouring states or counties and so were without friends or relatives to provide support, had little choice but to bring an unwanted pregnancy to term, not least because abortion was both illegal and dangerous, and financially impossible. The most desperate mothers then chose to kill their babies immediately after birth.⁶⁶

Nora Simmons was convicted of manslaughter at the Fall term 1907 of Walton County Circuit Court and sentenced to ten years imprisonment. She had been indicted for first degree murder, for the premeditated killing of 'an unnamed infant child' of which she was the mother 'by means of striking, beating and bruising'. She decided to plead guilty to the lesser offence after receiving advice from State Attorney J. Walter Kehoe.⁶⁷ Three years later Simmons petitioned the Board for clemency on the basis that she had been unable to pay a competent defence attorney, she was now twenty-nine years old, had served almost three years of her sentence and, 'that she in the future will ever endeavour to demean herself in a law abiding way'. Her application received strong endorsement from Kehoe: 'I feel like the defendant really had no criminal intent. She was a very simple minded negress, and I think her case is one that might readily receive

favourable consideration at the hands of the Pardoning Board. Were I a member of that body, knowing the facts as I know them, I should not hesitate at this time to vote for a pardon, believing that the time she has served is ample punishment for her'.⁶⁸

Kehoe recounted that Simmons had been travelling by hack from DeFuniak to Bay, a distance of approximately twenty miles, when she complained of stomach cramps. On arrival at Bay she went to a water-closet and gave birth to an illegitimate child. The dead baby was found shortly afterwards (a physician later stated the full term baby had been born alive): 'There were no evidences of violence used upon the child, and its death evidently resulted from neglect, exposure, and abandonment'. He surmised that Simmons's 'very low grade of intellect', rather than malice, had resulted in her abandoning the child. At a meeting of the Board on 5 January 1911, Nora Simmons was granted a conditional pardon, the justification for which repeated Kehoe's recommendation.⁶⁹ In a similar case, seven months later, on 6 July 1911, the Board voted to commute Bertha Spencer's sentence of life imprisonment to expire on 20 December 1912 'provided her prison record remains exemplary'. Board members were persuaded to act on the recommendations of the Supervisor of State Convicts and in the light of the circumstances of the crime which 'consisted of throwing a newly-born illegitimate child, said to have been born dead, into a well, because of her shame and fear of her family . . . and because the demands of justice have been met in her case'.⁷⁰

Were Simmons and Spooner young innocents who could not cope with unwed motherhood or mature working women who sought to deny the reality of

pregnancy? Simmons' age is recorded as twenty-two years at the time of her committal to the State Prison System (but given as twenty-nine years in 1910), but that of Spooner is not given. Infanticide was one offence where the image of a poor, illiterate, feeble-minded and unjustly imprisoned female convict was helpful in securing clemency. At the same time, accidents were possible and premeditation was constructed differently if the child was abandoned immediately after birth. 'If the child fell directly from the mother, instead of being elsewhere and then concealed in the privy vault, there was no premeditation.'⁷¹ Yet, under the 1868 statutes, a woman could be convicted of the offence of concealing the death of a bastard child, even if she had been acquitted of murder. The offence of concealment carried a sentence of twelve months' imprisonment or a fine of one hundred dollars, but seems to have resulted in few prosecutions.⁷²

'WOMAN GUILTY OF MURDER' was an infrequent and therefore sensational headline in any newspaper. The majority of applications to the Board from women convicted of murder refer to cases originally classified under English common law as *petit treason*; murders committed by wives against their husbands. Poisoning has historically been identified as a quintessential female crime, 'a distinctly female form of perversity and persistence in evil',⁷³ because as an act of domestic treason it was unpredictable (a woman could strike at any time) and obviously premeditated. Administering poison was one of four types of offences made punishable by death under Florida's 'Black Codes',⁷⁴ a collection of measures enacted by Southern state legislatures in 1865 and 1866 to guarantee white supremacy, ensure black subordination and restrict black freedom of movement in the wake of emancipation. Florida enacted a series of laws 'dealing

with crime and punishment, vagrancy, apprenticeship, marriages, taxation, labor contracts, and the judicial system' in 1865 and 1866 that were collectively referred to as the 'black code'. Such codes were designed to establish 'a separate class of citizenship for blacks, making them inferior to whites' and helped convince moderate Republicans in Congress to join with Radical Republicans to oppose President Andrew Johnson's Reconstruction plan.⁷⁵

The inclusion of poisoning in Florida's 'Black Codes' as a capital offence is a reflection perhaps of the levels of fear surrounding the criminal potential of emancipated black women. Poisoning was also associated with moral and physical weakness as sociologist Hans Gross observed in 1911:

Now, every murder, save that by poison, requires courage, the power to do, and physical strength. As a woman does not possess these qualities, she spontaneously makes use of poison. Hence, there is nothing extraordinary or significant in this fact, it is due to the familiar traits of woman [cruelty, dishonestly, lack of reason, hypocrisy and a predisposition to cheat at cards]. For this reason, when there is any doubt as to the murderer in a case of poisoning, it is well to think first of a woman or of a weak, effeminate man.⁷⁶

Clive Emsley suggests: 'The horror of the female poisoner was probably sharpened by the idea of domesticity and the preparation of food being central elements within the woman's separate sphere of behaviour'.⁷⁷ The juxtaposition of female domestic duties with poison and consequent inversion of appropriate female behaviour, signalled the potential danger of all women through their domesticity.⁷⁸

Cases involving poison appear to have been rare; the majority of women convicted in Florida of homicide chose more 'unfeminine' weapons such as pistols, revolvers, shotguns, axes and knives, and turpentine tools. This reflects

both the availability of these weapons, and underlines the rural or agricultural context of these offenders' lives, but also brings into question the issue of premeditation.⁷⁹ Annie Cooper stabbed Press Lee with the nearest weapon to hand, a turpentine cutter, after he assaulted her with his fist, both actions occurring in the heat of a quarrel. Cooper's actions could be plea bargained from first degree murder to manslaughter in Fall 1902 because of the relationship of this type of weapon to the issue of premeditation, something which was more problematic when the weapon of choice was poison.⁸⁰ African American women who were found guilty of poisoning their husbands had to be punished both to alleviate societal fears and as a means of deterrence to likeminded women, as illustrated by the following case.

In November 1897 Mary Mozeak, a twenty-two year old black woman originally from Cato, Georgia, but then living in Claremont (Lake County) was found guilty of poisoning her husband James with a well-known form of arsenic, sold as household poison and labelled 'Rough on Rats', in an attempt to secure a \$500 insurance claim, and was sentenced to life imprisonment. It was later revealed that the State's main witness, Adeline Traeger, had been paid by an unknown party to testify that she had witnessed a fight between the couple in which Mary Mozeak had threatened to kill her husband. In her application for pardon, Mozeak claimed she purchased poison at the request of her husband and gave it to him 'wrapped up in a small package' in the presence of State witness Lizzie Edwards, and he died four days later. However, she was innocent of murder, and thus unjustly punished. She further reminded the Board that she was 'friendless and without relatives or acquaintances to support her petition [she had

problems securing petition signatures in Lake and Orange counties because so many people who knew her had moved away], and prays a careful and thorough investigation of her conduct at the prison camps and the facts and circumstances of her application'.⁸¹ Even though the conviction appeared to have hinged on perjured evidence, the Board of Pardons was not moved to intervene in 1903 and Mary Mozeak remained at Marion Farms Stables as a domestic servant for ten years.⁸² African American women sought the favour of the pardoning board through recommendations from prominent white citizens, previous employers or camp supervisors for whom they had worked as domestic servants. In May 1903 Mrs G. H. Martin, now resident in Neusho, Missouri, wrote to the Board stating that, 'among the white people at Claremont, Fla, [Mozeak's] conviction was considered a miscarriage of justice'.⁸³ B. B. King, superintendent of the convict camp at Dunnellon, 'cheerfully' recommended to the Board that Mary Mozeak be pardoned, as she was 'obedient, faithful, thoroughly trustworthy, [and] of a good disposition'.⁸⁴ Mozeak's application was refused in 1903 but granted in November 1907.⁸⁵

In a similar case involving a different type of weapon, Sirena Jackson was found guilty of first degree murder with a recommendation to mercy by a Pensacola jury on 2 January 1899 and sentenced to life imprisonment. She had been indicted on two counts of murder by an Escambia County grand jury in July 1898; of striking Ben Jackson, her husband of two years, on the head with an axe and of strangling him with cord from the window shades. When the case came to trial in December 1898 Sirena Jackson pleaded 'not guilty' to the wilful murder of her husband, and testified that she had run away from her husband in May

1898 but that he found her in Pensacola two months later, beat her and threatened to kill her, so that she had reluctantly returned to the marital home but was planning to flee again on the night of the murder.⁸⁶ She claimed to have hit her husband with the axe as he sat up in bed and reached for his gun.⁸⁷ Consequently, her actions were justifiable as she had acted in self defence. This was the basis of her appeal for clemency on 2 May 1907, submitted to the Board by Charles H. Alston, a black lawyer from Tampa:

Your petitioner now and at all times deneyed [sic], and said that she was NOT GUILTY of the charge, and that she was justifiable in committing the act that she did comit [sic] because it was for the purpose of saving her own life, or preventing her from receiving great bodely [sic] harm at the hand of the deceased, therefore she prays this honorable Board of Pardon [sic] that her sentence may be commuted, and she may be pardon [sic].⁸⁸

The killing of a husband was particularly hard to justify, whatever the circumstances, so wives had to utilise particular language and a variety of strategies to explain their state of mind and legitimate their actions. They could not allow themselves to be considered as riotous and unpardonable women, so had to depict themselves as obedient but desperate individuals. Sirena Jackson's strategy had to encompass her choice of murder weapon and the fact that Ben Jackson was in bed at the time of the attack. It probably took more strength to attack a man with an axe or knife than a gun, which had heightened fears of strong almost masculine black female killers, while justifiable homicide was difficult to explain if the victim was in bed.

Sirena Jackson's file contains letters of recommendation from seven jury members,⁸⁹ two camp superintendents, the prosecuting attorney and Judge Evelyn Croom Maxwell who had sentenced her nine years before. Jackson's refusal to

become a victim of male violence and her decision to fight back were interpreted negatively by the trial jury, and thus tested the premise of the justice system: 'In order to merit protection a woman had to be obedient, submissive, and incapable of defending herself'.⁹⁰ While a woman's capacity to defend herself increased the likelihood of judicial sanction, judges did recognise the existence of mitigating circumstances. In Jackson's case, Judge Maxwell later observed:

The testimony showed a deliberate murder on her part and the verdict of the jury was entirely warranted, if not demanded by the evidence. The evidence, however, showed a persistent course of cruelty and persecution on the part of the murdered man following her from county to county and continuing the same oppression. The woman had tried to leave him and in this way escape his abuses, but [he] would not permit this and followed her from point to point until as a last resort in order to prevent him from making her life unbearable she killed him.⁹¹

In another letter to the pardoning board, Captain Saunders felt there must have been some 'great provocation' to make a woman would commit such a 'heinous murder' as attacking her husband in bed with an axe. He concurred that the punishment already inflicted was sufficient for the circumstances of the crime.⁹² Sirena Jackson received a conditional pardon in November 1907, 'it appearing that the offence was committed under great provocation'.

Gender stereotypes of women affected contemporaries' approach to the subject of women and homicide. In the early twentieth century the female killer was an anomaly who tested society's established boundaries of acceptable and unacceptable violence. Men were expected to be aggressive and violent, but women who killed were traditionally viewed as unbalanced and aberrant, and as never acting in a reasonable or justifiable manner, unless provoked beyond endurance. In her study of East Coast migratory labourers over the past century,

Jacqueline Jones observes that in contrast to white and foreign-born women, 'native-born black women never left the migrant stream; they were employed in the most arduous field jobs, and the growth in their numbers after the [Civil] war testified to the relative worsening of the economic well-being among blacks in general'.⁹³ Stress generated by dislocation, migration, isolation and economic marginality may have led some black women to respond defensively against men who were themselves predisposed to violent confrontation, making black women, who were often marginal and isolated figures, lacking community ties and support networks that might have prevented their ending up in the penal system, more likely to engage in crimes of violence.⁹⁴ This in turn enhanced the perception of black women as more masculine, independent and assertive than white women, as stereotypically strong and threatening women. 'By the end of the [19th] century the new "science" of criminology would confirm that sensual women were likely to be criminals, thus reassuring men . . . that the murderer and the true woman . . . were completely different kinds of people'.⁹⁵ At same time, in the context of the growing eugenics movement and national debates over feeble-mindedness and hereditary criminality, Florida witnessed evidence of the increasing presence of a particular breed of criminal woman: young, poor and non-white.

As illustrated by the cases so far, personal relationships were at the centre of female violence, but the context of unequal gendered power relationships was ignored, so the perpetrator's character came under scrutiny. While gender stereotypes 'create the belief that violence is incompatible with traditional female roles', racial and class stereotypes could have the opposite effect. Black and lower-class white women who murdered were frequently portrayed as aggressive,

sexually assertive and outspoken, individuals who were at odds with the community's behavioural codes, who, for example, refused to perform accepted domestic duties demanded by husbands. As a result, they could be readily understood as deviant and probably criminal individuals. Further, because nineteenth-century middle-class women were invested with moral superiority, Nicole Hahn Rafter observes that one of the effects of gender-stereotyping was such that 'criminal females were considered more depraved than males and hence less deserving', and were subject to differential treatment during incarceration.⁹⁶ The juxtaposition of the conception that the female offender surpassed the male in degeneracy and the image of black female offenders as dangerous, strong, calculating and erotic is demonstrated in the portrayals of Belle Williams and Jenny or Janie Walker. Belle Williams was arrested in August 1900 as an accessory to the murder of her husband, after allegedly having 'begged' her lover Archie Covington to shoot Jim Williams at a turpentine settlement seven miles west of Jacksonville (both Jim Williams and Archie Covington were turpentine hands).⁹⁷ Williams was detained at Duval County jail to await the instruction of the grand jury, joined thereafter by Covington who had fled the murder scene for a nearby swamp, walked to Nassau County, and was then arrested at Fernandina six days later.

Williams knew of the relationship between his wife and Covington, and had approached Covington on Sunday morning (12 August), possibly with the intention physically to warn Covington off. Covington admitted shooting Williams but claimed that he had drawn his revolver only in self-defence. In contrast, witnesses claimed 'that the woman stood behind Covington and begged him to

shoot her husband, stating that if he did not Williams would kill them both'.⁹⁸ In other words, she used Covington as her murder weapon. Belle Williams was thus labelled 'a cold-blooded negress', and usually referred to thereafter as 'the woman'.⁹⁹ A different spin on events, however, appeared during reports of the trial. Witnesses J. H. Gross and A. Link 'testified that Williams had been beating his wife after a quarrel about Covington, and she ran out of the house, followed by him still beating her, as she ran down to Link's house for protection. On the way down they were met by Covington; he and Williams immediately began to quarrel, and, during the quarrel, Covington shot Williams twice, and the latter died from the wounds'.¹⁰⁰ The circumstances of the domestic fight are also given in a letter to Governor Broward from State Attorney Augustus G. Hartridge, but, in contrast to Sirena Jackson, domestic violence was not used as a mitigating factor in the pardon application, even though the murder took place in a turpentine settlement: 'You are familiar with the low order of beings who live on turpentine farms'.¹⁰¹

The jury took half an hour to find both parties guilty of first degree murder and to recommend Williams to the mercy of the court.¹⁰² Two weeks later sentences were passed and the different reactions were noted: 'Archie Covington, a trembling negro, whose face wore an expression of anxiety, was called up to receive sentence, and as the sentence of death was passed upon him, his face assumed an ashen hue, and a look of terror took the place of the one of anxiety'. After motion for a new trial was denied, 'the negro returned to his seat in the prisoner's pen and covered his face with his hands and wept, moaning with that peculiar wailing sound typical of the negro race' (He had earlier expressed

confidence that he would be acquitted). In contrast, when Belle Williams received her sentence of life imprisonment: 'The woman seemed to be indifferent as to her fate, and as she sat down by Covington, tried to console him. The sight was a pitiful one, and made an impression on the other prisoners, who seemed to grow nervous as they waited for their turn to receive sentence'.¹⁰³

In July 1908 Belle Williams gave notice of her intention to apply for a full and free pardon and secured recommendations from several of her former employers, all of whom attested to her good character, honesty, veracity and exemplary deportment.¹⁰⁴ In 1905/1906 Belle was leased to G. W. Varn, formerly a turpentine operator in Rye, Florida, who wrote: 'I can say unreservedly that she was the best servant I have ever had in my home'.¹⁰⁵ J. F. Nutter (Superintendent at Wood Lumber Company, Caryville), foreman of the jury which had convicted her, wrote that the evidence against Belle and her accomplice had not warranted a conviction of murder, and that he had reluctantly yielded to the majority opinion that she was guilty. He declared that she had borne a good character before her conviction. Of equal importance was the fact that both Williams's parents were 'respectable' and 'well-liked by white people'. Nutter had known her family for nearly twenty years.¹⁰⁶ After seven years of penal domestic service, Belle Williams received a conditional pardon in October 1908, having become suitably domestic and obedient, a wayward childlike figure rather than a monster of calculating depravity.

In the first report of Frank Walker's death in April 1896, his assailant, his sister-in-law, Jenny/Jennie/Janie/Jessie Walker is described as a 'cold-blooded murderer' who had, after a quarrel at a 'negro settlement' near Mayport,

'deliberately shot him without saying a word'.¹⁰⁷ Jenny repeatedly claimed that she killed Walker in self-defence during an argument at the door of her house over his public conduct toward her. When Frank Walker, armed with a knife, insulted her and cut her, she picked up her husband's pistol and fired. On 12 May 1896 it took the twelve-man jury only seventy minutes to return a verdict of guilty with a recommendation to mercy.¹⁰⁸ While men might be held to have the right to respond physically when verbally provoked, women did not. Jenny was therefore abandoned by her family and condemned to serve out a sentence of life imprisonment at hard labour in Florida's convict lease. Seven years later, in January 1903, J. A. Haugh filed a second application for pardon for Jesse Walker, recounting that the trial transcripts and other vital documents had been lost in the Jacksonville fire, while the original defence attorney had left Florida, plus:

Her husband refused to assist her in her defense, and in the meantime married another woman in three months after she was incarcerated. All the officers of the convict camps give her a good name, and say that she ought to be pardoned. She has been a trusty for a number of years, and has been a faithful one, and I hope that the Board will pardon her.¹⁰⁹

At the Board meeting of 6 June 1907, Janice Walker 'after having served more than ten years of said sentence . . . and it further appearing that the murder committed [sic] by her was committed under very aggravating circumstances and under great provocation', was granted a conditional pardon.¹¹⁰

The view that female killers in contrast to male killers were motivated by specific physiological and psychological forces peculiar to their sex is both given credence and challenged by the cases appearing before Florida's Board of Pardons. Infidelity, humiliation and shame are common themes that permeate the pardon applications of male and female offenders. Twenty-eight year old Annie Jackson,

with the assistance of William C. Hodges, petitioned the pardon board for clemency in 1912 from a sentence of life imprisonment imposed in October 1911 when she was convicted of murdering her husband.¹¹¹ She argued that she 'was driven to the deed by jealousy and mortification' after discovering first her husband's infidelity, and then the realisation of further betrayal when the mill foreman enquired as to her husband's absence from work. Her realisation of her husband's continued betrayal increased her public humiliation and shame. That this was a 'victim-precipitated crime' was also emphasised. When she confronted her husband he 'came upon her and cursed her, and picked up a brick and advanced to strike her with it, whereupon she shot and killed him', and he died instantly.¹¹² The discovery of her husband's adultery and the subsequent effect of that on her mental state had been considered insufficient grounds for provocation which could have reduced the charge from first degree murder to manslaughter. Temporary insanity was infrequently used for black female defendants accused of murder, even in *crimes passionelles* where sexual provocation was central to the commission of the offence.

Themes of humiliation and shame arising from a husband's betrayal or a lover's desertion permeate the explanations for the violent actions of Emma Adams, Mary Woodson and Irene Mason. Emma Adams was found guilty of killing Luvenia Glenn. She informed the Walton County court that on 17 August 1906 her husband had asked to go to a lodge building a few miles from their house to seek membership but she was told to reappear the following Friday night.¹¹³ When she returned home she found her husband in bed with Glenn. The following day, 'your Petitioner having armed herself', after warnings from

white residents that Glenn intended to harm her physically, 'as she passed by the gate of Luvenia Glenn, your Petitioner represents that the deceased stepped outside her door and shot at your Petitioner one time, whereupon your Petitioner drew her own pistol and immediately shot the deceased and from which wound she died a few days afterwards'.¹¹⁴ Mary Woodson or Watson was convicted of assault with intent to murder Jim Haywood on 1 December 1911 and sentenced to two years imprisonment. Her application for pardon states:

Your petitioner was in love with a negro man by the name of Jim Haywood and had been living with him for a long time as his wife, when without any reason for it Haywood deserted the petitioner, and, when she asked him why he would not live with her any longer, cursed and abused her and refused to live with her again, and in the altercation which took place between them, when Haywood threatened to strike your petitioner, your petitioner drew a pistol upon him and snapped the same one time. The pistol did not explode, and no one was injured, but your petitioner, being friendless, away from her home and without money to employ counsel, was convicted by a jury and sentenced as aforesaid. She did not have counsel to represent her and no appeal was made against the sentence.¹¹⁵

Irene Mason was convicted of second degree murder and was sentenced to life imprisonment at Walton County Court in Spring term 1908. She admitted shooting Ella Ellerson with a pistol belonging to her sister, but argued that she was justified in her actions because Ellerson had cornered her during a fight and was in the act of striking her with an iron pipe. At the heart of the quarrel was Ellerson's affair with Mason's husband. 'Your petitioner further represents that she is twenty-four years of age, married and has lived in Florida for many years and before this occurrence never had any difficulty with anyone, and in view of the representations aforesaid, your petitioner humbly prays a pardon'.¹¹⁶

The applications for pardon of Jackson, Adams, Mason, Woodson and

Rebecca Mixon (convicted of the murder of Willie Butler in July 1903, and sentenced to life imprisonment) were all presented to the Board of Pardons by William C. Hodges. Using formulaic language to explain the violent actions of each female offender, Hodges constructed their applications for pardon so as to emphasise that the crimes were provoked by the male victim, and the applicants had acted in self-defence (even though as black women they had less claim to self-defence because in the eyes of white jurors and white judges, they were not real 'ladies').¹¹⁷ If Hodges could demonstrate that the victim was partly to blame for the assault, he could rationalise the mental state of his clients at the time that the offences were committed, and thereby justify the request for a reduction in the sentence imposed by the courts. All applications also accentuated the exemplary prison records and domestic service of the applicants. All applicants had 'served' the State Prison System as domestic servants, a factor that had to be underscored because it meant that they had been placed in positions of trust.¹¹⁸ A recommendation for Rebecca Mixon from Captain S. A. Rawls of the Florida Pine Company, noted that 'she is fully capable of being restored to liberty as her services and conduct while in prison have been exemplary and I am very much in hopes she will be able to obtain relief from your Honorable Board. She has been used as a domestic practically during her incarceration and has not violated any confidence reposed in her'.¹¹⁹

In all five cases, Hodges actively set about securing the necessary recommendations from prison personnel, influential citizens, prosecuting attorneys and sentencing judges, as well as petitions signed by residents of the counties where the respective convictions had taken place.¹²⁰ This was essential as

pardon board meetings were usually now held in executive session. Following her transfer from the Walton County jail to a naval stores camp at Milton in 1909 Adams's file shows there was a concerted effort to secure clemency over three years. Her good conduct inside and outside prison was emphasised by camp supervisors and Walton County citizens who thought she had 'suffered enough'. Twenty-five citizens of Mossy Head endorsed Mason's application for pardon: 'We think a pardon would be worthily bestowed as she was not quarelsome [sic] and the difficulty was undoubtedly forced upon her'.¹²¹

The deteriorating physical health of these prisoners also provided grounds for their applications for clemency. Emma Adams was suffering from pneumonia by November 1912,¹²² and a report on Woodson's physical condition stated: 'Ligaments of left arm severed while a child and which makes this arm practically useless for hard work; hysterical'.¹²³ All five female convicts are listed as requiring medical treatment at the Ocala Central Hospital in 1913 and 1914. Mixon was reported to be 'suffering from a very large tumor of long standing; and that if released she can get good employment and also be given proper medical attention'.¹²⁴ While such pronouncements further underline the inability of the State Prison System to cope adequately with sick and diseased prisoners, by the early 1910s, female convicts constituted an increasingly expensive class of prisoner. They were withdrawn from the lease as of 1910 and leasees bore the cost of housing and feeding female, sick and incapacitated prisoners at Marion Farms, a private prison farm. Women prisoners did not return a profit in comparison with able-bodied male convicts, and incapacitated female convicts were an increased financial burden to leasees, and to the State following the

opening of the State Prison Farm in 1914. There were then extra financial incentives associated with the pardoning of such convicts.

While Hodges' strategies were not immediately successful, persistent application to the Board eventually yielded results. At the Board meeting of 22 September 1914 Irene Mason was granted a conditional pardon to take effect on 10 October 1914, after recommendation from the circuit judge and all the trial jurors and, 'it being shown to the Board that there was considerable provocation for the crime and [she] has made an excellent prisoner throughout her service of nearly seven years; it being shown to the Board that she can promptly secure employment if released' and in recognition of 'a strong petition from white citizens of Walton county'.¹²⁵ Annie Jackson's appeal for clemency received strong support from the State Prison Physician, D. R. Handley, who wrote that Jackson had been his domestic servant since his appointment, and that he and his wife had found her to be 'a most abidable woman, ready and willing at all times to do any thing that was assigned her to do', and pledging to be 'personally responsible' for her.¹²⁶ A year later Mrs Handley supported Annie Jackson's case (they had met at Bradford Farms): 'I found her a most desirable servant and a woman with an even temper we never had one minutes trouble with her and as far as we could find out her prison record was perfect. I am willing to give Annie a house and pay for her services'.¹²⁷ J. J. Hodges made a similar recommendation for Mary Watson, 'who was known to me as Mary Woodson for a considerable period of time as a cook in my family and was an excellent domestic; she was quiet, obedient and trustworthy, and more than that was absolutely honest. If she is pardoned I will obligate myself to give her honourable

employment for as long as her prison sentence would have kept her in prison'.¹²⁸ If Hodges could show that his clients had the opportunity to return to 'respectable' employment, this greatly strengthened their chances of early release.

Adams and Mason were also assisted by Judge Emmett Wolfe who had sentenced them several years beforehand. Wolfe exhibited considerable indulgence for convicts, both male and female, who had spent several years in the prison system: 'I have not before me the exact date of this defendant[']s sentence but if the record shows that she has served full five years of her sentence, then I am of the opinion that a conditional pardon should be granted to [Adams]; if the five years have not expired then I think the sentence should be commuted to expire at the end of five years'.¹²⁹ Wolfe also recommended that a conditional pardon be granted to Mason 'as I think the ends of justice have been amply satisfied by the time already served'.¹³⁰ Hodges was able to take advantage of judges' traditional sense of *noblesse oblige*, and the views of officials like McLin, who advocated the 'proper and humane treatment of women prisoners', based on the conviction that women constituted a distinct class of offender that should be held separately and treated differently from male offenders. For Hodges the deviant female was an object of knowledge in the disciplinary apparatus of the State penal system. He understood the place of this object of knowledge in relation to the strategies of power, social crises and economic transformation that surrounded the convict lease in the early twentieth century, and was able, therefore, to construct a set of arguments that could convince Board members to extend clemency to his female clients.

While offenders continued to rely on the services of an attorney as the best

means of advancing their applications for pardon, one striking feature in the second decade of the twentieth century is that black women were actively participating in the effort to solicit the interest and sympathy of the Board of Pardons, lawyers and governors to an extent that was not apparent in earlier years. Clonda Johnson wrote to her lawyers from the State Prison Hospital to thank them for taking on her case and hoped they 'will push the mater [sic] fast-as possible' as 'it has Bin Eleven long years now since I have Breathe the Sweat Life of Liberty'.¹³¹ Rebecca Mixon complained: 'since i have been in Prison all of my friends that i knows of is dead . . . [and] everyone of these white People think that i deserve a Pardon and i ask you to Please do all that you can to get me i am willing to do anything that i know how for you if you do get me out. Please sir and soon'.¹³² In her communication to 'the onerball governar of Florida and all the gentmans of the Partninge Board', Emma Adams begins, 'i am riten to you all to day askinge yo for my fredom hopinge this letter to go be fore you all'. She explains that she has been in prison for three years 'an haven given the state no truble whate-ever', is seeking a 'trale Parten' and promising 'as longe as i live i will try by the helpe af the goode Larde to live a good [?] and law abidinge life the rest of my sharte days'.¹³³ In her own communication to Governor Catts, Annie Jackson wrote from Raiford: 'Dear Sir I am one that need help - are I suppose you to be one that am a friend to the poor I am beging [sic] with you at early Board meeting in March I have been in Prison six years and I am asking you to please grant my freedom when my case come before you with all good reports'.¹³⁴

While often poorly expressed, these letters reflect in part the greater

literacy of this group. Illiteracy rates among Floridians over the age of ten years decreased from 21.9 percent in 1900 to 13.8 percent in 1910; for African Americans over the age of ten years from 38.4 percent in 1900 to 25.5 percent in 1910.¹³⁵ Even though Board members and secretaries rarely replied (preferring to communicate with the lawyers representing these women) and it is difficult to gauge how they were perceived -with grace, pity or regarded as pathetic - the ability of women to write their own letters is important, not least because it further complicates the standard picture of poor, abused, illiterate and unjustly imprisoned black women. Such written appeals were framed in such a way as to invoke the sensibilities and benevolence of the men who held power in Florida and to conform to their sense of duty and honour, which were shaped by their religious beliefs, moral outlook and reputation as Southern Christian gentlemen. Such appeals did not challenge the traditional Southern values of these men; their language, content and form demonstrated conscious acknowledgement of white supremacy, patriarchy and black inferiority in the ordering of social relations.

The late nineteenth and early twentieth centuries witnessed a distinctive transformation in the image of the female offender, from monsters of depravity beyond redemption to that of 'childlike, wayward, and redeemable', able to regain some place in the world outside the prison.¹³⁶ Female offenders previously convicted as depraved monsters could later be described in pardon decrees as submissive and childlike, further reinforcing the infantilisation of women, already apparent in their rights to suffrage, divorce and property ownership. In the context of late nineteenth century England, Chadwick argues that 'gender alone was never an exculpatory factor in serious crime'. Judgements by officials with regard to

female offenders and victims were shaped by 'establishment' perceptions of femininity, that involved reconciling two conflicting elements of 'patriarchal sensitivity to the weakness and vulnerability of women' and the 'assumption of moral strength'.¹³⁷ Zedner notes a tendency on the part of nineteenth-century observers 'to assess female crime not according to the act committed or to the damage alone but according to how far a woman's behaviour contravened the norms of femininity'.¹³⁸ At the same time, 'establishment' perceptions of masculinity could also fundamentally affect the outcome of court proceedings and pardon applications. Crime constitutes a male domain in the historical imagination, hence the gendered language of offences, yet masculinity is as important a definitional term as femininity.

While women were not executed in the State of Florida, and the majority felt this was appropriate, the quasi-public nature of execution afforded men convicted of capital murder a popular status denied women. On the eve of Derry Taft's execution it was reported that following his consumption of a Spanish dinner, Taft had been visited by two black musicians who played the violin and sang 'religious pieces of music', while he wrote several farewell letters. 'Taft is composed and perfectly resigned to his fate although continuing to regret that Anna Joyner and S. P. Stewart, other negroes whom he implicated in the murder of his wife, were not to share the death fate with him, declaring this precious pair as guilty as himself'.¹³⁹ His gallows declaration that they should be on the platform with him (rather than as part of the crowd of onlookers) was interrupted by his sister-in-law Ella Paris who declared: 'I will be glad to see you die! I want to see you die', and requested she spring the trap door. This was refused by

Sheriff Jackson who performed the duty himself.¹⁴⁰ For all the melodramatic reporting of Taft's last hours, his execution, as the first legal hanging in Hillsborough County for several years, was an important vindication of due process and the pre-eminence of the criminal justice system over extra-legal punishment.

1. FTU 23 August 1900, p. 5.
2. FTU 29 November 1906, p. 4; Application for commutation, ACF 88/2642; Joe Walton's death warrant was received by Sheriff R. H. Bowden of Duval County on 18 April 1907 and the execution was fixed for 14 June 1907 but was returned to the Governor's office when the pardon board commuted the sentence on 7 June. See DWI Box 5 (1907-1909). Walton escaped on 25 March 1908 and was recaptured on 31 March 1908. He was eventually pardoned on 17 July 1919.
3. Motion for new trial, 20 January 1890 (denied), DWI Box 2 (1885-1895).
4. FTU 24 September 1890, p. 1. There is no record of the first conviction in the prison registers.
5. See William Wilbanks, "Homicide and the Criminal Justice System in Dade County," *Journal of Crime and Justice* (Summer 1979): 58-72; William Wilbanks, "Murdered Women and Women Who Murder: A Critique of the Literature," in Rafter and Stanko, eds., pp. 171-180.
6. Ken Driggs, comp., *Florida Executions List* (March 16, 1993), Florida State Archives, Tallahassee, Florida, p. 69.
7. Jones, pp. 187, 197.
8. Skillman, vol. 4, p. 3394.
9. *Revised Statutes of the State of Florida*, 1892, Article 3205, sec. 2, 1218.
10. Collins v. State, 88 Fla. 578, 102 So. 880, in Skillman, vol. 4, pp. 3430-3431.
11. Testimony, 15 June 1905, p. 1, DWI Box 4 (1902-1906).
12. Pleck, *Domestic Tyranny*, p. 222.
13. Friedman, pp. 222-223; Pleck, *Domestic Tyranny*, pp. 55, 109-110. By 1850 nineteen states granted divorce on the grounds of cruelty. Three states passed whipping-post laws between 1880 and 1905 for convicted wife-beaters. Similar developments were evident in the Britain as the Jackson decision (1891) made it

illegal for a husband to imprison or beat his wife. For a discussion of the Jackson case and context for legal change, see Maeve E. Doggett, *Marriage, Wife-Beating and the Law in Victorian England*, (London: Weidenfeld and Nicholson, 1992).

14. Pleck, "Wife-Beating," p. 71; Doggett, p. 31.

15. FTU 18 November 1900, p. 3.

16. TMT 10 October 1913, p. 4.

17. Klein, pp. 99-100.

18. From 1822 to 1881 divorces were granted in Florida because of consanguinial ties, impotence, bigamy, extreme cruelty, 'habitual indulgence of violent and ungovernable temper', or abandonment after one year; habitual intemperance was added in 1892. Between 1901 and 1905 divorce in Florida was permitted on grounds of incurable insanity, following financial and political pressure from Henry M. Flagler, who wished to divorce his second wife. Pamela Gibson found rising numbers of wives filing for divorce over a sixty year period. She concluded that abandonment was always the leading cause of divorce, and often resulted in poverty and economic distress for the abandoned wife. Alcohol was also a leading contributory factor in cruelty cases. See Pamela Nally Gibson, "From Frontier to Urban Boom: Divorce in Old Manatee County, Florida 1860-1926," M. A. thesis, University of South Florida, 1994, pp. 15-16, 168.

19. FTU, 29 February 1896, p. 8; FTU 4 September 1897, p. 8.

20. *Robert Henry v. State of Florida* (1897), SCCF 600, p. 2.

21. Ibid., pp. 11-13.

22. Ibid., pp. 15-16.

23. Ibid., p. 38.

24. Ibid., pp. 54-55.

25. Ibid., p. 57.

26. FTU 16 April 1897, p. 5.

27. Juror Alfonso Haworth stated the jury could not agree on a verdict as eleven members wanted to convict Henry of first degree murder with no recommendation to mercy while Haworth wanted to attach the recommendation of mercy. After several hours of indecision the judge instructed them that if a majority voted to recommend mercy 'the legal effect of such as recommendation would be to reduce the punishment imposed upon the defendant from death to life imprisonment'. See Affidavit of Alfonso Haworth, 24 February 1897. Ledwith argued the juror had subsequently never agreed to a verdict that would hang Henry, rather he had made an honest mistake in subsequently agreeing to a verdict that would hang Henry.

See Brief for Plaintiff in Error, 26 February 1897, in SCCF 600.

28. Affirmation of Sentence, 14 April 1897, in SCCF 600.

29. FTU 3 September 1897, p. 8.

30. FTU, 4 September 1897, pp. 8-9.

31. Lichtenstein, *Twice the Work of Free Labor*, p. 59.

32. RCA, 1905-1906, p. 338.

33. Copy of Minutes, Hillsborough County Circuit Court, 1910, ACF 179/1477.

34. W. S. Bullock to Albert W. Gilchrist, 13 August 1910, ACF 179/1477.

35. Robert McNamee to Hon. Albert W. Gilchrist, 27 August 1910, ACF 179/1477.

36. R. A. Jackson to His Excellency Albert W. Gilchrist, 18 August 1910, ACF 179/1477.

37. The grand jury true bill indicts Derry Taft, S. P. Stewart and Anna Joyner (alias Anna Barber) for the premeditated murder of Bertha Taft on 15 January 1909. Bertha Taft died from one mortal knife wound and several axe wounds. See True Bill, 8 May 1909, ACF 179/1477.

38. H. S. Phillips to Hon. G. T. Whitfield, 13 August 1910, p. 2, ACF 179/1477.

39. One woman testified to seeing Stewart 'burning some trash and that she smelt some rages burning' at 4 a.m. that night but Stewart's claim that it was garden refuse was accepted by the jury.

40. Anna L. Joyner to Governor, 10 August 1910, ACF 179/1477.

41. H. S. Phillips to Hon. G. T. Whitfield, 13 August 1910, p. 6, ACF 179/1477.

42. TMT 3 September 1910, p. 6.

43. C. L. Wilder to Gov. A. W. Gilchrist, 6 September 1910, ACF 179/1477.

44. Minutes A: 101.

45. R. A. Jackson to His Excellency Albert W. Gilchrist, 18 August 1910, ACF 179/1477.

46. Robert M. Ireland, "Frenzied and Fallen Females: Women and Sexual Dishonour in the Nineteenth-Century United States," *Journal of Women's History* 3 (Winter 1992): 95.

47. Blakey, p. 24.

48. Ibid., p. 33. Albertus DeVilliers Vogt discovered the phosphate deposits and was known as the 'Duke of Dunnellon'.

49. The Dunnellon Company was the largest operator with twelve mines and over four hundred workers. Despite the Panic of 1893 and subsequent recession and falling prices, the number of phosphate mining companies continued to increase until 1896, when consolidation and buyouts left fifty operations in Florida by 1900. By 1913 Florida was the foremost producer of phosphate, producing over two million tonnes of phosphate per year at a value in excess of eight million dollars. After the initial period of speculation ended and the industry stabilised in the mid-1890s, mining camps became more regulated, yet lynch mobs remained active in these frontier communities into the 1920s. See Blakey, pp. 35-36, 46, 53.

50. Kennedy, p. 266.

51. Ayers, *Vengeance and Justice*, pp. 234-235.

52. W. S. Bullock to Honorable Pardonong (sic) Board of State of Florida, 22 November 1916, ACF 139/2431.

53. Pleck, "Wife-Beating," p. 72.

54. Julian Pitt-Rivers, "Honor", p. 506.

55. Willbanks, p. 167.

56. Copy of Indictment, certified by A. A. Stewart, Clerk of the Circuit Court of Brevard County, 29 April 1905, ACF 174/803.

57. The application is signed by Belle Skinner but the signature looks similar to that of D. L. Gaulden, her attorney, ACF 174/803.

58. Synopsis of Testimony Against Belle Skinner, pp. 1-8, ACF 174/803.

59. W.S. Norwood to Hon. N. B. Broward, 8 July 1905. Two petitions in file: "To Whom it May Concern" from Captain D. N. Purvis and eight guards, Central Hospital, Ocala, 1 March 1911; Petition of 20 March 1911 signed by 37 citizens of Brevard county.

60. McGovern, "Pensacola," p. 31.

61. Minutes A: 157. William Skinner had written twice to State Prisoner Supervisor, John T. Lewis in 1911 asking Lewis to do what he could for Belle Skinner. See W. W. Skinner and S. J. Norton to John T. Lewis, no date; Telegraph to John T. Lewis, Supreme State Prison, Tallahassee, from W. W. Skinner, Titusville, Flo., 11.28 PM: 'This is to state that I Will Skinner will do all in my power to take care and support my wife Belle Skinner if the pardon board will free her. I am in very good health and am willing and anxious to do all in my power for her. Thanking you one and all I am faithfully yours'. See W. W. Skinner to John T. Lewis, 3 May 1911, ACF 174/803.

62. Three models, 'preferential', 'punitive', and 'equal', for evaluating the relationship of gender to sentencing and parole decisions are discussed in Nicolette Parisi, "Are Females Treated Differently? A Review of the Theories and Evidence on Sentencing and Parole Decisions," in Rafter and Stanko, eds., pp. 205-220.

63. Rafter, *Partial Justice*, p. 136; W. E. B. Du Bois, *The Souls of Black Folk* (New York: Dover Publications, Inc., 1994), p. 107.

64. In his Philadelphia study, Wolfgang presents data on location by sex and finds that female offenders and victims are likely to kill or be killed at home. (The reverse is true for males). See *Patterns in Criminal Homicide*, pp. 364-367, 106-109.

65. See Margaret Marsh, "Suburban Men and Masculine Domesticity, 1870-1915," in Carnes and Griffen, eds., pp. 111-127.

66. Lane, *Roots of Violence*, pp. 128-129.

67. Grand Jury True Bill Spring Term 1907 Walton county [signed by J. Walter Kehoe, state attorney for First Judicial Circuit of Florida]; Copy of Sentence, 14 October 1907, ACF 174/1551.

68. J. Walter Kehoe to Messrs. Campbell & Son, 2 December 1910, ACF 174/1551. There are two undated petitions in the file from citizens of Walton county to Honourable Board of Pardons. They contain a total of 110 signatures including those of J. W. Campbell, sheriff of Walton county, and Rev. W. A. Winslett.

69. Minutes A: 126. 'Upon recommendation of the State Attorney who prosecuted applicant, who states that applicant is a young negress of a very low grade of intellect, whose crime consisted of abandoning a bastard infant, just born under very trying circumstances, and that there was no evidence of any real criminal intent, said State Attorney expressing himself as believing strongly that her punishment has now been sufficient and that she should be pardoned; and many citizens of Walton Co having petitioned this Board to like effect; and applicant's prison conduct having been exemplary'.

70. Minutes A: 150.

71. Peter C. Hoffer, *Murdering Mothers: Infanticide in England and New England, 1558-1803*, (New York: New York University Press, 1981), p. 70.

72. Skillman, vol. 4, pp. 3434-3435.

73. Shapiro, p. 73.

74. The three other capital offenses were burglary, rape of a white woman and inciting insurrection. Joe M. Richardson, "Florida Black Codes," *Florida Historical Quarterly* 47 (April 1969): 374.

75. Jerrell H. Shofner, "Florida's Black Codes," in Leonard Dinnerstein and Kenneth T. Jackson, eds., *American Vistas: 1877 to the Present*, (New York and Oxford: Oxford University Press, 1995), pp. 59-60, 62.
76. Hans Gross, *Criminal Psychology: A Manual for Judges, Practitioners, and Students*. Translated by Horace M. Kallen. (Boston: Little, Brown, and Company, 1911), p. 346, 357.
77. Clive Emsley, *Crime and Society in England 1750-1900*, (2nd. edn. London: Longman, 1996), p. 156.
78. Shapiro, p. 77.
79. Sarah Harrell proved herself to be a 'bad wife' when she struck her husband in anger with a flat iron as he was packing to leave her: 'for several months past [Harrell and his wife] have lived a parrot-and-monkey life, with the breadwinner usually getting the worst of it'. See FTU 22 October 1899, p. 9.
80. Application for pardon, filed 4 December 1908, ACF 18/1214; Miller, "Murder, Punishment," p. 48.
81. Statement of Application, 1903; Mary Mozeak to Hodges & Hodges, January 1903 in ACF 63/620.
82. RCA, 1907-1908, p. 478; Miller, "Murder, Punishment," pp. 125-126.
83. Mrs G. H. Martin to Members of the Pardoning Board, 30 May 1903, ACF 63/620.
84. B. B. King to Hon. Pardoning Board, no date, ACF 63/620.
85. RCA, 1907-1908, p. 478.
86. Trial/Court testimony p. 3, ACF 43/1002. During the court trial, neighbours Ben and Mary Green testified that on many occasions they had heard Jackson assaulting his wife who feared he might kill her.
87. Trial/Court testimony, p. 4, ACF 43/1002.
88. Application for Pardon, 2 May 1907, ACF 43/1002.
89. 'I, as one of the jurors who sat on the case of Sirena Jackson, when she was tried and convicted of murder in the Circuit Court of Escambia County, on the 10th. day of December, A.D. 1898, do hereby recommend her to your honorable body for mercy, felling as I do that the punishment all ready (sic) inflicted upon her has been sufficient, under the circumstances for the crime she committed. Therefore I indorse her application for a pardon'. W. F. Brunson to Hon. Pardon Board, 20 March 1907, ACF 43/1002.
90. Conley, *Unwritten Law*, p. 71.

91. Synopsis of Evidence, ACF 43/1002; Judge E. C. Maxwell to the pardoning board, 16 March 1907.
92. Capt. F. D. Saunders to the pardoning board, 20 March 1907, ACF 1002.
93. Jones, *Dispossessed*, p. 178.
94. Rafter, *Partial Justice*, p. 145.
95. Jones, p. 121.
96. Rafter, *Partial Justice*, pp. xxvi, 3
97. FTU 14 August 1900, p. 5.
98. FTU 19 August 1900, p. 5.
99. FTU 23 August 1900, p. 5.
100. FTU 3 January 1901, p. 5. They were convicted on the testimony of four African Americans, two male and two female. See FTU 23 August 1900, p. 5.
101. A. G. Hartridge to Governor Broward, 26 August 1908, ACF 91/1173.
102. FTU 3 January 1901, p. 5.
103. FTU 20 January 1901, p. 12. On 10 October 1903 'upon full examination of the evidence and a recommendation from Hon. J. L. Farris', Covington's sentence was commuted to life imprisonment at hard labour.
104. See M. W. Covington to Governor Broward 6 July 1908: 'I am convinced that she has profited by her most unfortunate experience'.
105. G. W. Varn to the pardoning board, 8 July 1908, ACF 91/1173.
106. J. F. Nutter to Hon. pardoning board, 28 July 1908, ACF 91/1173
107. FTU 16 April 1896, p. 5.
108. FTU 13 May 1896, p. 5.
109. J. A. Haugh to Hon. B. E. McLin, 16 January 1903, ACF 182/586. Notice of application for full and free pardon was published from 20 to 29 April 1901 in the *Times Union and Citizen*. This suggests there was an earlier submission.
110. PADR, vol. 3.
111. Copy of Bench Docket, Circuit Court, Pasco County, Fall Term 1911, ACF 138/1938.

112. Copy of Indictment of 4 October 1911, 30 September 1912, ACF 138/1938; Application for pardon, no date, possibly November 1912. Notice of first application for pardon was published for two consecutive issues of the weekly *Pasco County Record* as of 12 November 1912.

113. David Fahey observes that black women, many of whom were domestic servants, were members of black fraternal lodges, including the Grand Lodge of Florida, from the 1890s to 1930s. See David M. Fahey, *Temperance and Racism: John Bull, Johnny Reb, and the Good Templars*, (Lexington, K.Y.: The University Press of Kentucky, 1996), pp. 122-123.

114. She was convicted of first degree murder in May 1907 then the conviction was reversed by the Florida Supreme Court on 11 December 1907 and she was awarded a new trial. At the second trial in May 1908 she was persuaded by her lawyer to plead guilty to manslaughter and was consequently sentenced to nine years at hard labour on 15 May 1908. See Certified copy of indictment and sentence in *State of Florida v. Emma Adams*, provided by Chas H. Gordon, Clerk Walton County circuit Court, DeFuniak Springs. In her application for pardon Adams states that she did not understand the consequence of this plea. Application for pardon [filed 10 October 1910] to G. T. Whitfield, ACF 96/1495.

115. Copy of Indictment, 1 August 1911; Application for pardon to Hon. Albert W. Gilchrist, Governor, and the Associated Members of the Pardoning Board of Florida, no date, ACF 189/1754.

116. Copy of Grand Jury True Bill, Walton county, Spring Term, circuit court 1908; Application for pardon, c1910, pp.1-2, ACF 151/1400.

117. Jones, p. 336.

118. According to the 1904 prisoner census nearly eighty percent of all black female prisoners had previously been employed as domestic servants. See Rafter, *Partial Justice*, p. 141.

119. S. A. Rawls to Hon. Board of Pardons, 29 May 1911, ACF 156/1626.

120. Irene Mason's application emphasises provocation for the offence, domestic service to prison hospital as a cook, endorsements from jurors, convict captain and Mossy Head citizens, fully represented for the crime, able to find employment on release so as not to be a burden to the state.

121. When application for pardon was filed on 10 October 1910 it was accompanied by several letters of support, including a Petition dated 30 December 1909 from captain and prison guards at the State prison camp at Milton, Florida to Hon Pardon Board, sent with cover letter of 10 January 1910 from J. C. Grimsley and Bros. Naval Stores, Milton to Mr. W. C. Hodges; Three letters arrived after the petition had been submitted. Captain J.E. Brown confirmed Emma Adams had been in his camp for two years and describes her as a prisoner who 'has been industrious and kind'. See Captain J. E. Brown to Hon. Board of

Pardons, 18 October 1910. W. P. Murphy states that Adams worked as a cook in his camp at Carbett. See W. P. Murphy to Hon Board of Pardons of the State of Florida, 18 October 1910, ACF 151/1400.

122. Memo from Dr. H. Mason Smith, M.D., November 1912, ACF 189/1754.

123. Under commending features for Mary Woodson (in "Synopsis of case" usually found in files of William C. Hodges' clients): 'No injury done; girl a hysterical subject and an extra good cook and can get a good home, etc', ACF 189/1754.

124. Minutes B: 42. By 1913/1914 the Central Hospital was handling over 150 prisoners per month. All female convicts were transferred there in this period as they were withdrawn from the contract system. Prison Hospital Registers, 1911-1913 and Ocala Prison Registers, 1914, CLP Box 7/ Folders 4 & 5.

125. Minutes B: 43.

126. D. R. Handley to Hon. Sidney J. Catts, Gov. and Associate Members of Pardoning Board, 10 February 1917, ACF 138/1938.

127. Mrs. D. R. Handley to the Board of Pardons, 20 November 1918. This was further confirmed by Raiford superintendent, J. S. Blich: 'Colored State Female Prisoner, Annie Jackson, is a Splendid prisoner, and has a perfect record'. See J. S. Blich to Honourable Board of Pardons, 8 December 1918. A previous employer, W. O. Harrison of the Naval Stores and General Merchandise Company in Venice also praised Jackson as 'a worthy servant' who had given 'perfect satisfaction in every way'. Jackson had been placed there as a domestic servant on 1 February 1912. See Petition, 24 August 1912. A similar recommendation was received for Irene Mason. It described her as 'a good obedient servant', and continued: 'We will be glad to keep her in our employ should she be fortunate to secure a pardon which we feel sure that she deserves'. See Mr & Mrs R. H. McDougald to Mr. Wm. C. Hodges, 16 December 1912, ACF 138/1938.

128. J. J. Hodges to the Pardoning Board, 27 September 1912, ACF 189/1754.

129. J. Emmett Wolfe to Hon. G. T. Whitfield, 29 November 1912, ACF 96/1495.

130. J. Emmett Wolfe, Pensacola to Hon. Board of Pardons, 15 June 1914. Hester Stone's pardon file contains only one letter, from J. Emmett Wolfe, ex-Circuit Judge of the First Circuit, now of Hudson, Wolfe & Cason, Miami: 'Gentlemen:- About October 15th, 1908, one Hester Stone was convicted of Homicide in the Circuit Court of Walton County, and sentenced, I think, for life. She has, therefore, served nearly nine years sentence, and from my recollection of the testimony, it would be, in my judgement, advisable at this time to grant her a conditional pardon, and I, therefore, recommend to the Board that such pardon be granted to said defendant'. See J. Emmett Wolfe to Hon Board of Pardons, 4 June 1917, ACF 177/2617.

131. Clonder Johnson to Hodges & Hodges, 11 March 1905, ACF 139/783.
132. Rebecca Mixon to Mr Hodges, 2 August 1914, ACF 156/1626.
133. Emma Adams to 'oneball governor of Florida' , 14 April 1911 and 2 July 1911, ACF 96/1495.
134. Annie L. Jackson to Hon. Sidney J. Catts, 11 February 1917, ACF 138/1938.
135. U. S. Department of Commerce and Labor, Bureau of Census, *Thirteenth Census of the United States Taken in Year 1910, Abstract of Census* (Washington D.C.: Government Printing Office, 1913), p. 245.
136. Rafter, *Partial Justice*, pp. 49-50.
137. Chadwick, p. 289.
138. Zedner, p. 28.
139. *Tampa Tribune*, 18 October 1910, p. 10.
140. *Ibid.*, 19 October 1910, p. 1.

CONCLUSIONS

It is the duty of this Board to take cognizance of the facts and circumstances [surrounding a case], and to equalize justice so far as it is possible. Then, frequently it is evident that the purposes of the law have been accomplished before the expiration of the sentence of the court, and it is then the duty of the pardoning power to exercise this clemency.¹

In Florida, conviction and sentence constituted the vindication of the law as process and ideology, while legal formalism was adhered to as far as possible to create some semblance of equal and impartial justice, but officials recognised that the law as administered by imperfect humans was fallible. In contrast to the formulistic and professionalised rules and proceedings of Florida courts later in the twentieth century, the legal process in the period under review left room for discretionary decisions, personal influence and flexibility. Criminal actions were rarely justified but they could be evaluated subsequently in such a way as to justify the extension of clemency. Governors tampered with court judgements, usually with the consent of the sentencing judge and prosecuting attorney, and in some cases the jury members. Justifications for the continued use of the pardoning power in Florida included: the constraints on judges from the provisions of the criminal statutes; the belief on the part of judges, prosecuting attorneys and jury members that the original sentence should be modified by the pardon board

in the light of subsequent events or their personal convictions as they re-evaluated the evidence after the trial; the notion that while a prisoner might be 'technically' guilty, he/she was 'morally innocent'; in circumstances where a defendant had been badly advised by a court-appointed defence attorney or had not enjoyed legal representation at the original trial; and where the mental and physical welfare of a convict had declined during incarceration thus rendering the original sentence inappropriate.

The pardon power was related to a set of legal doctrines, statutory requirements, literary conventions and social norms that regulated its use and gave it practical meaning. It continued to be intended as a 'supreme and plenary supplement to the inadequacies and imperfections of ordinary governmental procedure so far as it affects individual liberty',² but served in practice as a means of regular release from an imperfect State Prison System. The pardon power was nevertheless a means of asserting the power of the State over its subjects. The conservative priorities of the men who sat on Florida's Board of Pardons and who ran the State's criminal justice system predominated. They saw it as their duty to preserve order, protect respectable citizens from the threatening activities of offenders, mete out retributive and deterrent punishment and ensure collectively the fair and proper administration of criminal justice and the paramount place of security considerations. While pardon board records underline the existence of a range of white attitudes toward black and lower-class defendants, Floridians in general had little sympathy for the plight of convicts. They supported rigorous efforts to pursue, arrest, prosecute and imprison offenders, and evinced little interest in prisoner rehabilitation. Thus neither Governors nor the majority of

Cabinet officers were pressurised into re-ordering their priorities. However, applications initiated during the administration of one governor and decided by a successor could benefit from changing attitudes, different personnel, and the subsequent emergence of new factors relevant to the determination of clemency and desert. For example, Governor Gilchrist recommended that a convict sentenced to life imprisonment should be eligible for release after twenty years of good conduct and proposed amending the gaoltime schedule accordingly.³

Absolute definitions of criminal behaviour and criminal 'types' did not exist. Women and men were defined and restricted by the law in different ways, as is demonstrated above in the chapters on rape, homicide and respectability, and there was clearly a gendered discourse taking place both inside and outside the courtroom that impacted on both court proceedings and post-sentencing decisions.

Further, written law and procedure could not account for the fact that no two crimes were ever identical. As Conley concludes for nineteenth-century Kent:

The efficient administration and enforcement of the statutes was only part of the task of the men who ran the criminal justice system. It was equally important to maintain and protect the safety, good order, and respectability of the local community. That these aims were best accomplished by honoring the idea of the law as an impartial entity while at the same time judging cases according to persons and circumstances is neither surprising nor even necessarily sinister. No two crimes were ever exactly alike, and a justice system that lacks the flexibility to consider such factors as malice, motive, and prior offenses would be blatantly unjust.⁴

Further, concepts of order in the New South were premised upon unfixed and fluid notions of acceptable and unacceptable behaviour that encompassed concepts of shame, honour, dishonour and right.

Violent forms were not necessarily considered 'wrong' when used in vigilantism or in self-defence, in the execution of felons or to discipline social

inferiors, and to regulate labour-employer relations. Brundage notes: 'Outraged whites and blacks alike embraced violence as a weapon of moral regulation, and disciplined offenses such as drunkenness, public decency, prostitution [and promiscuous women], wife abuse, and laziness with whippings . . . Accounts of near-lethal attacks prompted by moral transgressions filled the columns of small town and country newspapers throughout the postbellum South'.⁵ In Florida, as elsewhere, justifications for such attacks were drawn from older traditions of folk and community justice and continued to exist alongside an increasingly centralised criminal justice system. These traditional forms of community justice reflected tacit assumptions that were premised on notions of how black and white, male and female, lower class and middle class, youthful and middle aged persons should behave in certain situations. Their continued existence explains why working definitions of criminality and criminal responsibility utilised by pardon applicants and pardon board members were often influenced more by such assumptions than by the written law and procedure.

Just as offenders did not commit or view their actions in a cultural vacuum, appeals for clemency for these actions also must be viewed within a cultural context. Behind each pardon application with its letters of support, petitions and other endorsements, lay an interlocking web of personal and social relations. Letters from convicts, prison personnel and lawyers to the pardon board describe social relations in the language of power and knowledge, domination and subordination. At the same time they are an extension of the bargaining process where convicts utilised the variegated subcultures and varying degrees of self-regulation, negotiation, resistance and accommodation of the convict lease system

to endure its brutalising and dehumanising effects. Prisoners could use the informal hierarchy of labour in convict camps and also their positions as trustees to secure support from camp personnel for their release. The pardon process helped undermine the alienation and marginalisation of the convict from the world outside the convict camp. Convicts, their families and victims were also actively engaged in discourse about the boundaries of behaviour and the adequacy of punishment, but their voice was never as strong. The pardon power became a tool for manipulating the behaviour of convicts inside convict lease - good behaviour is always cited in pardon board decrees and minutes referring to individual applicants - as a means partly to silence critics who argued that convict leasing and reformation were incompatible. Pardon board decrees include concern for the moral welfare of the prison system's charges and moral regeneration could be mentioned occasionally in connection with the convict lease.

Increasing numbers of offenders with the financial resources to pay for what might be years of legal assistance and who could draw on a network of family, friends and former employers, put pressure on the Board of Pardons to moderate the severity of their sentences. Rising numbers of applications for pardon were not therefore a symptom that the criminal justice system was failing in structural terms, but were rather an indicator that it was functioning, albeit in an inefficient and discretionary manner. The marked increase in conditional pardons and the decline in full pardons coincided with the codification of racial segregation and discrimination across the southern United States, and in Florida signified the realisation of a conservative impulse to achieve continued control over ex-offenders, the majority of whom were African American labouring people

subject to disfranchisement and prevented from exercising rights of citizenship gained after the Civil War.

Douglas Hay has argued that the criminal law in eighteenth-century England was in effect manipulated by a ruling-class conspiracy against the lower orders to exact deference and maintain power, in which 'mercy was part of the currency of patronage' and pardons constituted an important part of the 'ideology of mercy'. Use of pardon to relieve select individuals from a criminal system based on terror 'allowed the rulers of England to make the courts a selective instrument of class justice, yet simultaneously to proclaim the law's incorruptible impartiality, and absolute determinacy'.⁶ As pardons were part of the 'ideology of mercy' of Florida governors and functioned as part of the 'tissue of paternalism' that partly governed racial relations in late nineteenth and early twentieth-century Florida society,⁷ it is possible to characterise clemency as a selective instrument of racial justice, but at the same time, it is necessary to recognise that African Americans were not passive actors in Florida's criminal justice system in this period. The pardon process challenged Florida governors and criminal justice personnel to moderate their attitudes to offenders and their views of criminal behaviour.

Did pardons ultimately serve the class interests of the 'best people' of Florida? Did they underline and provide evidence of their benevolence and humanitarianism? Justice was still conceived of and weighed in personal terms, and the recommendations of the 'best people' of status and property still carried the greatest influence: 'The great majority of petitions for mercy were written by gentlemen on behalf of labourers. It was an important self-justification of the

ruling class that once the poor had been chastised sufficiently to protect property, it was the duty of a gentleman to protect "his" people'.⁸ Criminologist Edwin Sutherland contended: 'The recommendation of the pardon board should be determined by the innocence or guilt of the individual of his fitness for a return to ordinary society. It should not be determined by the attitude of the victims of the crime or of the judge or prosecuting attorney or by the age, injury, or sickness of the prisoner'.⁹ In an age before systematic probation and parole and centralised, professionalised penal facilities, and continued extra-legal sanctions, these factors and the existence of family and employment relationships were highly relevant to the decision whether or not to release an offender back into the community.

African American, lower class white and female Floridians used the criminal justice system to seek redress, to gain justice and to bargain for mercy. At the same time, they knew that letters of recommendation from former employers, camp guards and captains, and influential persons of good standing in the local community were crucial levers in attracting the favourable attention of the Board. Because pardon was a regular releasing device it permitted, even invited, influential men and women seeking to demonstrate their paternalistic concern for social inferiors, to intervene. Mercy was part of the 'currency of patronage' of the pardon board members and local officials and underlines the interconnectedness of law, property and power, but pardons were represented as acts of public welfare and charity rather than as favours to certain class interests. Yet, middle class men and women of status and community standing could make direct appeals to the governor and members of the Board with the intention of

influencing the post-conviction stages of the criminal justice system. At the same time, applicants were judged against middle class standards of manners and morals that continued to evolve in the context of Florida's incorporation into the national economy; and this coincided with the redefinition of racial and social relations in that state as 'Jim Crow' laws were enacted. While many Floridians were willing to attach blame for crime and disorder to the 'degenerate' and unruly lower orders, especially urban African Americans, the law in Florida did not function as a white male middle-class conspiracy.

Nevertheless, the predominately white male personnel of the courts, police forces and pardoning board had serious implications for the kind of justice African Americans could expect and receive. Offenders and pardon board applicants relied on white attorneys, sheriffs or police officers, judges and jurors to advance their cases. The only contact that most white policemen in Jacksonville or Miami had with urban African Americans was with criminals; this in turn heightened racial hostilities. Rabinowitz argues that throughout the nineteenth century white Southerners 'sought to convince themselves and the blacks that the freedmen could expect equal justice', but African Americans in reality had little respect for the system of justice.¹⁰ W. E. B. Du Bois and others indicate widespread black discontent with the courts by the early twentieth century.¹¹ Convicts became social outcasts from a community defined by white supremacy, black inferiority and patriarchy. They were deprived of rights of citizenship and subject to penal servitude under the convict lease but, perhaps ironically, a white man of means suffered ultimately a potentially greater 'social death' than African American or lower-class white male convicts.

Meah Dell Rothman argues that many 'disparities in punishment' resulting from the rigidity inherent in 'a discretionary penal system can be mitigated by clemency, one of the most powerful ways of bringing law and justice into harmony'.¹² The gap between law and justice remained conspicuous in Florida while the power of the pardon board remained open to unrestrained and capricious action, but on balance this was probably a strength, albeit discretionary, in the administration of justice in this period. Against a background of economic upheaval, far-reaching political change and continuing social reorganisation, pardon board members presented an image of cautious deliberation, stability and pragmatism. Pardon decisions do not constitute a set of rational, bureaucratic and objective resolutions, and as such were not exclusively shaped by strategic political considerations, but pardon was nevertheless a 'political tactic' that was 'situated within a specific set of power relations'.¹³ In exercising the pardoning power, despite or perhaps because of constant criticism, members of Florida's State Board of Pardons believed they were acting in an honourable, humanitarian and proper way.

1. House Journal, 1907, pp. 37-38.

2. William W. Smithers, "The Use of the Pardoning Power," *Annals of the American Academy of Sciences* 52 (1914): 63.

3. House Journal 1911, p. 44.

4. Conley, *Unwritten Law*, p. 203.

5. Brundage, pp. 21-23.

6. Douglas Hay, "Property, Authority and the Criminal Law," in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 45-48. For a refutation of the notion of conspiracy, see John H.

Langbein, "Albion's Fatal Flaws," *Past and Present* 98 (1983): 96-120.

7. Hay, p. 45, 47.

8. Ibid., p. 47.

9. Sutherland, p. 506.

10. Rabinowitz, *Race Relations in the Urban South*, p. 59.

11. Du Bois, p. 108.

12. Rothman, "The Pardoning Power," p. 155.

13. Foucault, p. 23.

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